

AMS STANDARD SUBCONTRACT TERMS AND CONDITIONS**TABLE OF CONTENTS**

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SUBCONTRACT TERMS AND CONDITIONS

Article 1 - DEFINITIONS, CONTRACT DOCUMENTS AND RELATED MATTERS PERTAINING TO SUBCONTRACTOR'S WORK

1.1 Definitions.

The following definitions apply internally to these terms and conditions and the Master Subcontract Agreement:

- (a) "Applicable Law" all laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any court or governmental agency or authority, and rules, regulations, codes, orders, interpretations of any federal, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, or court having jurisdiction over the Project or any activity conducted at or in connection with the Project or in connection with the Subcontract.
- (b) "Architect" means the architect employed by the Owner in connection with the Project as identified in the Project Work Order.
- (c) "Certificate of Final Completion" means the certificate indicating that the Work other than potential warranty obligations has been completed as required by the Owner Contract.
- (d) "Certificate of Substantial Completion" means the certificate indicating that the Work has been substantially completed as required by the Owner Contract.
- (e) "Change" means an addition, reduction, acceleration, suspension or other modification in the scope or time for the performance of Subcontractor's Work.
- (f) "Change Order" has the meaning set forth in Section 10.1.
- (g) "Contract Documents" has the meaning set forth in Section 1.3.
- (h) "Contractor" means the entity identified as such in the Project Work Order. It is understood that HillPhoenix a Dover Company may also be referred to in the Owner Contract as the "Construction Manager", "Design-Builder", etc. In all such instances, the term "Contractor" shall be deemed interchangeable with the terminology used in the Owner Contract to refer to HillPhoenix a Dover Company.
- (i) "Damages" means, individually and collectively, as applicable, any and all losses, costs, expenses, damages, injuries, claims, demands, obligations, liabilities, judgments, fines, penalties, interest and causes of action, including without limitation administrative and legal costs and reasonable attorney's fees.
- (j) "Delay Events" has the meaning set forth in Section 11.3.
- (k) "Design Professional" as used herein, means an architect, professional engineer, or other professional engaged by the Owner to provide design services to the Project.
- (l) "Effective Date" shall mean the date defined as such in the heading portion of the Project Work Order.
- (m) "Indemnified Parties" means the Owner, Contractor, and their respective directors, officers, employees, parents and subsidiaries of any tier, representatives, agents, successors and assigns, and any and all representatives, agents, directors, officers, employees of any of the foregoing.
- (n) "Owner" means Contractor's customer in connection with the Project as identified in the Project Work Order.
- (o) "Owner Contract" or "Prime Contract" means the contract between Contractor and the Owner for the Project identified in the Project Work Order, and all written amendments, change orders, modifications and supplements thereto.
- (p) "Project" means the project in connection with the parties have entered into a Project Work Order as identified in this Subcontract Agreement.
- (q) "Schedule" has the meaning set forth in Section 3.2.
- (r) "Subcontract" means the agreement between Contractor and Subcontractor for the Project and is comprised of all the Contract Documents.
- (s) "Subcontract Agreement" means the Master Subcontract Agreement, Project Work Order (or Purchase Order), and all Exhibits referenced therein and executed by Contractor and Subcontractor.
- (t) "Subcontract Amount" means the amount to be paid by Contractor to Subcontractor for Subcontractor's performance of the Work as identified in the Project Work Order. The Subcontract Amount includes all federal, state, county and municipal taxes imposed by Applicable Law upon labor, services, equipment, materials, supplies or other items acquired, performed, furnished or used in connection with or arising out of the Subcontractor's Work, including, but not limited to, transportation, sales, use, gross receipts, excise, unemployment, and personal property taxes, whether payable by or levied or assessed against Contractor, Owner or Subcontractor. If Applicable Law requires any such taxes to be stated and charged separately, Subcontractor shall include a separate line item on any applications for payment or invoices indicating the amount of such taxes. The total price of all items included in Subcontractor's Work plus the amount of all taxes applicable thereto, shall not exceed the Subcontract Amount.
- (u) "Subcontract Exhibits" means the Exhibits marked in the Master Subcontract Agreement and Project Work Order as applicable to the Agreement.
- (v) "Subcontractor" means each vendor, supplier, materialmen, consultant, contractor or other person or entity performing a portion of the Work and/or providing equipment or services directly or indirectly in connection with the Work as defined in the Contract Documents as set forth in Section 1.3 hereunder.
- (w) "Sub-subcontractor" means each lower tier vendor, supplier, materialmen, consultant, contractor, subcontractor or other person or entity performing a portion of the Work for Subcontractor hereunder and/or providing equipment or services directly or indirectly in connection with the Work or Subcontract.
- (x) "Work" means the work to be performed by Subcontractor under the Project Work Order. Subcontractor shall perform all technical, professional or other services and provide all supervision, labor, equipment, material, supplies, permits, insurance, hoisting, scaffolding, systems, tools, apparatus, transportation, shop drawings, samples and submittals, and all other items necessary to perform and complete the work required by this Subcontract.

- 1.2 **Safety.**
Subcontractor acknowledges that the safety of persons and property on and off the Project site in connection with performance of the Work is of prime importance to Contractor and Owner, and Subcontractor shall cooperate with Contractor and Owner in efforts to prevent injuries to persons and property and to comply with all applicable safety rules and regulations, including as set forth in Section 14.2, to create and maintain an injury free environment.
- 1.3 **Contract Documents.**
The Subcontract is comprised of the following "Contract Documents": the Master Subcontract Agreement; the Project Work Order; the Subcontract Exhibits; Change Orders executed by both Parties; and, the Owner Contract, but only with respect to those obligations that are applicable (directly or indirectly) to the Work to be performed by Subcontractor under the Subcontract and Owner's rights, redress and remedies as provided in Section 1.6. Subcontractor assumes toward the Contractor and the Owner all the obligations that the Contractor assumes toward the Owner in the Owner Contract with respect to the Work to be performed by Subcontractor under the Subcontract.
- 1.4 **Contract Documents are Complementary.**
The Contract Documents are intended to be read as a whole, and any Work required by one part and not mentioned in another (e.g., item shown in drawing and not mentioned in the specifications, or mentioned in the specifications and not shown in drawing), shall be executed to the same extent as though required by all. The addition, omission or incorrect placement of a word or character in one part of the Subcontract shall not change the intent of the Subcontract as a whole, and shall not constitute the basis for a claim by the Subcontractor for an increase in the Subcontract Amount or an extension of time within which to perform and complete the Work. In the event of a conflict between one or more provisions of the Contract Documents, the provision imposing the more demanding term, condition, duty or standard of performance, or the greater limitation on the nature and type of relief or damages allowed to Subcontractor, shall control. A conflict exists in the Contract Documents when the same subject matter is addressed by two or more provisions of the Contract Documents in a manner that cannot be reconciled to give effect to all provisions. In the various parts of the Contract Documents where reference is made to applicable codes and standards, the Work shall, except as otherwise specified, conform to the latest issue of the referenced code or standard available at the time the Work is performed.
- 1.5 **Obligation to Study the Contract Documents.**
Subcontractor shall carefully study and compare the Contract Documents and notify Contractor in writing of any error, inconsistency, omission or ambiguity prior to executing any affected Work. Contractor's determination of the Subcontract requirements in view of the error, inconsistency, omission or ambiguity shall be final and Subcontractor shall perform the Work consistent with that determination, subject to dispute resolution under Section 13.4. Subcontractor shall be liable for any added costs or damage resulting from its performance of any Work involving an error, inconsistency, omission or ambiguity in the Contract Documents that has not been reported to Contractor, including any re-performance and related costs of correction and any additional costs incurred by the Contractor.
- 1.6 **Rights and Remedies under the Owner Contract.**
Contractor shall have the benefit of all rights, redress and remedies against Subcontractor that Owner has against Contractor under the Owner Contract.
- 1.7 **The Architect.**
If Owner does not engage an Architect on the Project, the parties' rights and obligations under the Subcontract shall be determined without regard to any certificates, determinations or other functions the Contract Documents anticipate the Architect will issue, make or perform. The Owner may at any time substitute the Architect employed by it in connection with the Project.

Article 2 - SCOPE OF SUBCONTRACTOR'S WORK

- 2.1 **All Items Required to Perform the Work are Included.**
Subcontractor and its Sub-subcontractors shall strictly comply with all requirements of the Subcontract in the performance of the Work and other activities in connection with the Subcontract. Subcontractor acknowledges and agrees that it can perform and complete the Work in strict compliance with the Subcontract requirements, including Subcontract Amount and Project Schedule, and acknowledges and agrees that it can do so even though certain drawings, specifications, addenda and bulletins, may not be fully developed at the time of contracting. Subcontractor further acknowledges and agrees that the Work includes the provision of all equipment, components, systems, materials, documentation and other services and items required to perform the Work and make it complete, functional and/or operational, notwithstanding the fact that each such service or item may not be expressly mentioned in the Contract Documents.
- 2.2 **Project Investigation.**
Subcontractor represents that it has, or has had full opportunity to, examine the Project site and Contract Documents; that it has satisfied itself as to the requirements of the Work and all conditions which may affect the Work, including but not limited to the availability and costs of labor, services, equipment, materials, supplies and other items required for the Work, the observable condition of the Project site and access thereto to perform the Work and actual and anticipated local weather conditions; that the Subcontract Amount and Schedule have been determined with due regard for all such requirements and conditions which do or may affect the Work; and, that its entry into the Subcontract has not been induced either wholly or in part by any promises, representations or statements by or on behalf of Contractor, Owner and/or the Architect, other than those set forth in the Subcontract. Subcontractor acknowledges and accepts the risk of mistake or error with respect to all matters within the scope of its Project investigation, and agrees that it shall not be entitled to, and shall make no claim for, any additional compensation or damages of any kind or character or an extension of time for performance should any requirements or conditions applicable to the Work be different from or in addition to those identified by Subcontractor through such reasonable investigation.
- 2.3 **Existing Conditions.**
Subcontractor shall inspect the work provided by others onto which the Work is to be placed or to which the Work is to be applied or attached and shall notify Contractor in writing of any observable defect or other detrimental condition in any such work prior to the performance of the

affected Work. If Subcontractor fails to so notify Contractor, Subcontractor shall be deemed to have accepted the condition of such work as suitable for its Work. Subcontractor shall be liable for any added costs or damage resulting from its performance of any Work involving any unsuitable work provided by others of which Subcontractor has not notified Contractor as required, including any re-performance and related costs of correction and any additional costs incurred by the Contractor, Owner or their other contractors.

2.4 Duty to Coordinate.

Subcontractor agrees that Owner and Contractor shall have the right to perform or have performed other work in or about the Project site during the time when Subcontractor is performing its Work. Subcontractor shall: coordinate its Work activities at the Project site with those of Contractor, Owner, and their other contractors; afford a reasonable opportunity for the introduction and storage of materials and the execution of such work; and make every reasonable effort to enable both its Work and such other work to be completed without hindrance or interference. Subcontractor shall notify Contractor in writing of any potential conflicts between its Work and such other work and if requested by Contractor shall participate in the preparation of coordinated drawings in areas of congestion. In situations where a conflict arises between the Subcontractor's Work and the work of others, Contractor will determine in its discretion which work has the highest priority and direct the performance of the Work accordingly. Subcontractor shall not be entitled to an adjustment of the Subcontract Amount or an extension of time for its field coordination activities as the Subcontractor shall anticipate and provide for such activities in the Subcontract Amount and agreed time for performance.

2.5 Protection of Work.

Subcontractor shall protect the Work at all times prior to its acceptance by Owner. Subcontractor shall bear the risk of loss or any damage to the Work or a portion thereof prior to Owner's acceptance (regardless of the holder of title thereto), and Subcontractor shall promptly replace, repair, restore or rebuild any such damaged Work so that it conforms to the requirements of the Subcontract.

2.6 Quality and Protection of Equipment, Materials and Supplies.

Unless otherwise expressly agreed, all equipment, material, supplies and other items furnished by Subcontractor and incorporated into the Work shall be new, unused, of first rate quality, suitable for use in the Work and in strict conformity with the requirements of the Subcontract. Subcontractor shall at all times cover and protect from damage and theft all equipment, materials, supplies and other items that are to be used in the performance of, or incorporated into, the Work at the Project. Subcontractor is solely responsible for and shall bear the risk of loss for all equipment, materials, supplies and other items stored by it at the Project site (regardless of the holder of title thereto), and Subcontractor shall replace any shortages thereof at its expense.

2.7 Protection of On Site Property.

Subcontractor shall at all times protect the Project, Project site and the work and property of Owner, Contractor and their other contractors on the Project site from any damage arising out of its operations. Subcontractor shall be responsible for any such damage and Contractor shall be entitled to backcharge Subcontractor the amount of any deductible payable under any first party property insurance maintained by Contractor or Owner for the Project in connection with such damage. Subcontractor shall at its expense promptly replace, repair, restore or rebuild any damage to the Project, Project site and the work and property of Owner, Contractor and their other contractors on the Project site arising out of its operations if so directed by Contractor

2.8 Insurance Claim for Work, Equipment, Materials and Supplies.

If the damage or theft to any property, equipment, materials or supplies is recognized by an insurer to be covered by a first party property insurance policy maintained by Owner or Contractor for the Project, Contractor will reimburse Subcontractor its direct costs to replace, repair, restore or rebuild damaged Work to the extent of insurance proceeds Contractor actually receives for that work, less Contractor's cost to prepare and adjust the claim. Subcontractor shall cooperate with Contractor and Owner in connection with the preparation and adjustment of any insurance claim for damage to the Work. Under no circumstances will Contractor or Owner be required to take any legal action to pursue coverage for damage or theft to the Work in the event the insurer fails or refuses to recognize the existence or applicability of coverage for such damage. If requested by Subcontractor, Contractor shall assign and shall request that the Owner assign to Subcontractor its rights in connection with any such coverage issues, but only to the extent thereof.

2.9 Protection of Other Property.

Subcontractor shall at all times take all necessary precautions to protect all third party property not covered by Sections 2.5, 2.6 and 2.7 from any damage arising out of its operations, including the property of adjacent landowners, utilities, roads, bridges, waterways and railroads. If any such third party property is damaged as a result of Subcontractor's operations, Subcontractor shall promptly replace, repair, restore or rebuild it at its expense.

2.10 Housekeeping.

Proper housekeeping is an essential component of creating and maintaining an injury free environment. Subcontractor shall observe proper housekeeping controls for construction debris, waste materials and rubbish arising from its operations and shall cleanup and remove all such items from the Project site on a daily basis (or shorter interval if required for safety or if directed by Contractor). If Contractor permits Subcontractor temporarily to store debris, waste materials or rubbish at a designated location on or near the Project site, Subcontractor shall ensure that the items are at all times stored safely and shall remove them from the designated location immediately following Contractor's direction that it do so. Fire exits, corridors, ladder ways, doorways and exit paths in general shall be clear and open to pedestrian and handicapped access traffic at all times, specifically including nights and weekends. As part of the completion of its Work and as a condition precedent to final payment, Subcontractor shall perform a final cleaning to remove all stains, splatter and dirt from its Work and to remove any remaining construction debris, waste materials and rubbish arising from its operations from the Project site. If Subcontractor fails to observe proper housekeeping within forty-eight (48) hours of Contractor's written notice (or shorter time if necessary for the safety and protection of individuals or property) to properly correct a deficiency which compromises the maintenance of an injury free environment, Contractor may properly clean up and remove any such construction debris, waste materials or rubbish by the most expeditious means available and charge Subcontractor for the costs incurred.

2.11 Clean-Up Crews.

Contractor reserves the right, upon forty-eight (48) hours written notice (or shorter time if necessary for the safety and protection of individuals or property) to all responsible subcontractors, to clean-up one or more areas of the Project site and remove unidentifiable construction debris, waste materials and rubbish from the area. Contractor shall backcharge the costs incurred for this work on a pro-rata basis to each subcontractor working in the affected area.

2.12 Temporary Structures and Facilities.

Subcontractor shall provide all temporary offices, structures, sheds, storage facilities and other temporary structures or facilities required for the Work, complete with all required utility hookups and services, including gas, telephone and water. Subcontractor shall maintain temporary structures and facilities in a safe and orderly condition and in accordance with any applicable federal, state or local requirements.

2.13 Layout and Field Measurements.

Subcontractor shall provide any layouts, field measurements and verifications required for the performance of its Work and shall be responsible for their accuracy.

2.14 Cutting, Fitting and Patching.

Subcontractor shall perform all cutting, fitting, patching, sleeving, grouting, and sealing of its Work that may be required to fit it to, or to receive, the work of others.

2.15 Use of Contractor's Equipment.

Unless Contractor has expressly agreed in the Contract Documents to allow Subcontractor to use Contractor's equipment without charge, Subcontractor shall pay Contractor its rental cost for such equipment or, if the equipment is owned by Contractor, Contractor's charge out rate for that equipment. Subcontractor acknowledges that Contractor has no obligation to allow Subcontractor to use any of Contractor's equipment on the Project and that Subcontractor is solely responsible for supplying all equipment required to perform and complete the Work.

2.16 Meetings.

At weekly safety and other subcontractor meetings held by Contractor, Subcontractor shall be represented by personnel who are authorized to make binding decisions on Subcontractor's behalf in connection with the performance of the Work and its other obligations under the Subcontract, including committing to safe work practices, staffing levels, equipment, material and supply deliveries, and coordination of the Work. Subcontractor may be required by Contractor to attend, and Subcontractor agrees to actively participate in, any such meetings prior to commencement date of the Work, including meetings and safety orientations for the maintenance of an injury free environment.

2.17 Daily Reports.

If required by Contractor and notice of such requirement is provided by Contractor to Subcontractor prior to the issuance of a Project Work Order, Subcontractor shall submit a daily report to the Contractor, which shall, at a minimum, include: a description of the Subcontractor's Work activities for the day; a work force count by trade for Subcontractor and its Sub-subcontractors; a listing of any major deliveries; and, a description of any Delay Event or other matter that has or may adversely impact Subcontractor's ability to perform the Work in accordance with the Subcontract and its actual or anticipated impact on the Work. Subcontractor's daily report is due by noon the following day. In addition to any other applicable requirements in the Subcontract, Subcontractor's right to submit a claim for any Delay Event or other matter that adversely impacts the Work is conditioned on Subcontractor's submission of its daily report describing the matter, and Subcontractor waives any claim in connection with a matter that is not adequately described in Subcontractor's daily reports. Subcontractor's daily reports shall not serve as a substitute for, or relieve Subcontractor of its obligation to provide, formal written notice to Contractor as required elsewhere in the Contract Documents of any Delay Event or other matter that has or may adversely impact Subcontractor's ability to perform the Work in accordance with the Subcontract, and the Subcontractor waives any claim that does not comply with such requirements and agrees that Contractor's actual or constructive notice of the claim will have no effect on the claim or Subcontractor's waiver of the claim.

2.18 Testing.

Where testing agency standards are referenced in the Contract Documents, all materials to be incorporated into the Work shall be tested and certified by an approved, independent testing firm acceptable to the Contractor. Subcontractor is responsible for the cost of all required testing.

2.19 Equipment, Material and Supply Deliveries.

Subcontractor shall be responsible for offloading, storing and protecting any equipment, materials, supplies and other items for the Work at the Project site and shall make the appropriate provisions to receive, unload and safely store all such items. Subcontractor shall coordinate deliveries of equipment, materials, supplies and other items with Contractor in advance and shall only schedule such deliveries during hours designated for that purpose by Contractor. Equipment, material, supplies and other items stored on the Project site shall be in the care and custody of the Subcontractor and shall not be removed from the site without the written consent of the Contractor. Subcontractor agrees to keep Contractor fully informed regarding its delivery schedule for any equipment, materials, supplies or other items and shall immediately advise Contractor in writing of any delay or anticipated delay that may affect the progress of the Work or the work of Contractor, Owner, or their other contractors.

2.20 Parking and Storage.

The locations for employee and equipment parking, material and supply storage and temporary trailers shall be designated and approved by Contractor if on the project site or on another site arranged by the Contractor. Contractor reserves the right to change any designated or approved location and Subcontractor shall promptly advise its employees of the change and relocate any materials, supplies and temporary trailers to the newly designated location at no cost to Contractor.

- 2.21 **Royalties and License Fees.**
Except as otherwise provided by the Contract Documents, Subcontractor shall pay all royalties and license fees required as a result of its Work. Subcontractor shall defend, indemnify and hold harmless the Indemnified Parties as provided in Section 18.1 in connection with any suits or claims for infringement of any patent or other intellectual property rights.
- 2.22 **Sub-Subcontractors.**
Subject to the written approval of the Contractor, Subcontractor shall select Sub-subcontractors with a demonstrable commitment to safe work practices supportive of an injury free environment as is required of Subcontractor and shall bind all Sub-subcontractors to the provisions of the Subcontract applicable to the subcontracted Work. Neither the Subcontract nor any subcontract with a Sub-subcontractor shall create any contractual relationship between any Sub-subcontractor and either Owner or Contractor, nor any payment or other obligation on the part of either Owner or Contractor to any Sub-subcontractor. Notwithstanding the existence of any subcontract, Subcontractor shall be fully responsible for ensuring the safe performance of the Work as if no such subcontract exists. Each subcontract, purchase order or other agreement entered into by Subcontractor in connection with the Work shall be assignable and shall be assigned to Contractor on written request.
- 2.23 **Monthly Status Reports.**
If required by Contractor and notice of such requirement is provided by Contractor to Subcontractor prior to the issuance of a Project Work Order, Subcontractor's monthly estimates for payment shall be accompanied by a status report from Subcontractor, which shall include the following: (i) a submittal progress report as required by Section 6.2; (ii) information on the status of materials and equipment that may be in the course of preparation or manufacture (if requested by Contractor, a complete up-to-date procurement schedule shall be submitted on forms acceptable to the Contractor); and (iii) an updated schedule and a narrative progress update on Subcontractor's Work, including a description of any Delay Event or other matter that has or may adversely impact Subcontractor's ability to perform the Work in accordance with the Subcontract and its actual or anticipated impact on the Work.
- 2.24 **Prohibition on Certain Work and Dealings.**
Until final completion of Contractor's work under the Owner Contract, Subcontractor shall not perform any work in connection with the Project directly for the Owner or any of Owner's tenants (if applicable), or deal directly with the Owner's representatives or its other contractors in connection with the Project unless permitted to do so in writing by Contractor.

Article 3 - TIME FOR PERFORMANCE OF THE WORK

- 3.1 **Time for Performance.**
Subcontractor acknowledges that the dates required in the Schedule for the performance and completion of the Work are essential conditions of the Subcontract and agrees that Subcontractor's failure to perform and complete the Work consistent with such dates shall constitute a material violation of the Subcontract. Subcontractor represents that it has taken into consideration and made allowances for all hindrances and delays incident to its Work as provided in Sections 2.2 and 2.4.
- 3.2 **The Project Schedule.**
If not prepared and attached to the Subcontract as an Exhibit, Contractor will develop a Project schedule that will schedule and coordinate the times required for each area of work on the Project, including the Work (the "Schedule"). Subcontractor shall participate and cooperate with Contractor in scheduling the times and sequences required to perform Subcontractor's Work, and Subcontractor agrees to perform its Work in accordance with the Schedule, as it may be revised and amended from time to time by Contractor, including as provided in Section 9.2. The terms "Schedule", "Project Schedule", "Contractor's Schedule", "CPM Schedule" and like terms are used interchangeably in the Contract Documents and each shall refer to the "Schedule" pursuant to this Section 3.2.
- 3.3 **Work Plan.**
In support of the Project Schedule, Subcontractor shall, as a condition precedent to Contractor's obligation to process Subcontractor's first estimate for payment, furnish Contractor with an itemized breakdown of Subcontractor's Work, which shall include the anticipated sequence of the Work and durations in terms of days and man-hours for the work activities necessary to complete the Work in the time required to support the Project Schedule. Subcontractor represents that it shall: (i) prepare documents that are feasible and realistic for the planning, scheduling and coordination of the Work, and (ii) prepare schedules, updates, revisions and reports that accurately reflect Subcontractor's reasonable expectations as to the sequence of activities, duration of activities, productivity or efficiency, projected and actual completion of any Work item or activity, and delays or problems expected or encountered and specified float time, including as necessary, accounting for any direction provided by Contractor under Section 9.2.

Article 4 - PROGRESS PAYMENTS

- 4.1 **Schedule of Values.**
Within fifteen (15) days after the Effective Date, Subcontractor shall submit for Contractor's approval Subcontractor's itemized schedule of values that allocates the Subcontract Amount to the various portions of the Work. The schedule of values shall be in the form and supported by data to substantiate its accuracy as required by the Contract Documents, or as Contractor may reasonably require. Upon acceptance by Contractor, Subcontractor will use the schedule of values as the basis for its periodic estimates for payment. If it is later determined that the schedule of values is unbalanced, the Subcontractor shall revise the schedule as necessary and submit a revised schedule of values for Contractor's approval. Subcontractor's submission of the required schedule of values is a condition precedent to Contractor's obligation to make payments to the Subcontractor.
- 4.2 **Progress Payments.**
Contractor shall pay Subcontractor the Subcontract Amount on a monthly basis as follows:

4.2.1 Estimates for Payment.

Unless otherwise stipulated by Contractor, on or before the earlier of: (i) the 25th day of each month; or (ii) no later than five (5) days prior to the date, if any, in the Owner Contract for the submission of estimates for payment, Subcontractor shall submit a written estimate for payment to Contractor in the form annexed as **Exhibit D** along with all substantiating data and information required by the Contract Documents or as reasonably requested by Contractor. The amount due Subcontractor on each estimate shall be calculated as provided in Section 4.2.2. If approved by Owner and Contractor, Contractor shall pay to Subcontractor the fees set forth in a Purchase Order (the "Fees") within forty-five (45) days of Contractor's receipt of an undisputed invoice, provided that Subcontractor has furnished a correct invoice and completed the scope of work to Contractor's satisfaction. Subcontractor acknowledges and agrees that Owner's payment to Contractor under the Owner Contract of amounts due Subcontractor under the Subcontract is a condition precedent to Contractor's obligation to pay such amounts to Subcontractor. Subcontractor further acknowledges that it is relying on the credit and ability of the Owner to pay for Work performed and not Contractor and accepts the risk that it will not be paid by Contractor for Work performed in the event Contractor is not paid by Owner for such Work.

4.2.2 Basis for Calculating Payment.

The amount due Subcontractor on each estimate for payment shall be calculated based on the percentage of Work completed by Subcontractor to the date of the estimate as approved by the Contractor, Owner and/or Architect. The amount of the payment shall be the sum of: (a) the proportionate value of completed Work based on Subcontractor's approved schedule of values; less (b) the following amounts: (1) retainage of 10%; (2) all previous payments; (3) all charges for materials and services furnished by Contractor to Subcontractor; and (4) any other charges and deductions as provided for in the Subcontract.

4.2.3 Payment for Stored Materials.

Payments made on account of materials not incorporated in the Work but delivered to and accepted by Contractor and suitably stored (on or off the Project site), shall be made, if at all, in accordance with the Contract Documents. Sub-subcontractor or Material Supplier invoices itemizing respective quantities and unit costs of such stored material shall accompany all requests for payments for stored materials. At its option, Contractor may make payment for stored material by joint check to Subcontractor and the applicable Sub-subcontractor or material supplier and require as a condition precedent to payment for stored materials that a bill of sale, any necessary Uniform Commercial Code documentation and/or proof of proper insurance be furnished from Subcontractor and the applicable Sub-subcontractor or material supplier. Materials accepted by Contractor and stored off site other than at the Subcontractor's premises shall be: (i) stored in a bonded warehouse; (ii) fully insured; (iii) segregated from other material; and (iv) clearly marked "Property of Hillphoenix".

4.3 Joint Checks.

Prior to submitting its first estimate for payment, Subcontractor shall provide Contractor with a statement identifying the name, address and telephone number of each known Sub-subcontractor. Subcontractor shall update its statement with each monthly estimate for payment as required to identify any new Sub-subcontractors and any name, address or telephone number changes for existing Sub-subcontractors. Contractor may, in its sole discretion make payment for any portion of Subcontractor's Work by joint check to Subcontractor and the applicable Sub-subcontractor or material supplier or benefit fund to which Subcontractor has an outstanding obligation. Any payments made by Contractor by joint check as provided in this Section 4.3 shall be deemed to have been made directly to Subcontractor.

4.4 Subcontractor's Use of Payments.

Subcontractor shall promptly pay for all labor, services, equipment, materials, supplies and other items acquired, performed, furnished or used in connection with the performance of the Work covered by payments received from Contractor, and shall furnish evidence satisfactory to verify compliance with this requirement when requested by Contractor. All funds paid to Subcontractor in connection with the Project constitute funds held in trust by Subcontractor. Subcontractor agrees to apply first to the payment of: (i) taxes owed by Subcontractor based on labor, services, equipment, materials supplies and other items acquired, performed, furnished or used in connection with the performance of the Work; (ii) Subcontractor bond and insurance premiums; and (iii) Sub-subcontractors and any applicable Sub-subcontractor benefit funds.

4.5 Estimates For Payment and Partial Waivers and Release of Liens and Claims Required.

As condition precedent to receipt of any progress payments, Subcontractor shall provide Contractor with its duly executed "Standard Interim Estimate for Payment, Waiver and Release" in the form annexed as **Exhibit D**, and any waiver and release of lien rights on progress payments as may be required by statute in the State where the Project is located.

4.6 Payment is not a Release by the Contractor.

No progress payment made by Contractor shall be deemed conclusive evidence that Subcontractor has satisfied its obligations in connection with all or part of the Work covered by such payment, and Contractor shall not by virtue of having made any such payment be deemed to have accepted any Work not meeting the requirements of the Subcontract or to have waived any claims against Subcontractor in connection therewith. All payments are provisional and any overpayment by Contractor to Subcontractor shall be deemed to be a mistake of fact and shall be promptly repaid to Contractor upon demand. The acceptance by Subcontractor of each progress payment from Contractor shall constitute a waiver and release by Subcontractor of all claims of any kind against the Contractor for payment for Work performed up to the date of Subcontractor's estimate for payment against which payment was made and accepted, excluding only Subcontractor's entitlement to retainage withheld in connection with such payment and any disputed amount withheld from payment by Contractor.

4.7 Payment Withholding.

Contractor may withhold the whole or any part of any payment to Subcontractor to such extent as Contractor reasonably deems necessary to protect it from loss as a result of: (a) incomplete, defective or damaged Work not remedied; (b) Contractor backcharges; (c) claims filed or reasonable evidence indicating probable filing of claims, including lien claims, involving or arising out of Subcontractor's Work; (d) damage to Contractor's, Owner's or their respective other contractors' work; (e) failure of Subcontractor to make payments when due to Sub-subcontractors; (f) reasonable insecurity regarding Subcontractor's intention or ability to continue with the proper and timely

performance of the Work; (g) failure of the Subcontractor to perform or comply with any of its obligations under the Contract Documents; or (h) expenses arising from frivolous claims against Contractor. Contractor may also at any time on written notice to Subcontractor offset against any payment due to Subcontractor under the Subcontract any amount due from Subcontractor to Contractor under any other agreement between the parties.

Article 5 - FINAL PAYMENT

5.1 Final Payment.

Subcontractor shall submit its final estimate for payment to Contractor when it has completed the Work, including punch list items, in accordance with all requirements of the Subcontract as approved by the Contractor and Owner and/or Architect. Subcontractor's final estimate for payment shall be in the form annexed as **Exhibit E**, and shall include all substantiating data and information required by the Contract Documents or as reasonably requested by Contractor. Subcontractor's final estimate for payment shall show the Work as one hundred percent (100%) complete and shall be calculated in the same manner as Subcontractor's periodic progress payments under Section 4.2, provided that retention shall not be deducted to arrive at the net amount due. If approved by Owner and Contractor, Contractor shall pay the net amount due to Subcontractor within ten (10) days after Owner pays the corresponding amount to Contractor under the Owner Contract, or such lesser time as may be required by statute in the State where the Project is located, provided all conditions precedent to final payment under the Contract Documents, including the following, have been met: (i) any conditions precedent in the Owner Contract to Subcontractor's entitlement to final payment have been satisfied; (ii) Subcontractor's surety, if any, has consented in writing to the making of final payment; (iii) Subcontractor has provided Contractor with a statement that it has: (a) paid all federal, state, county and municipal taxes, duties and other amounts imposed by Applicable Law upon any labor, services, equipment, materials, supplies or other items acquired, performed, furnished or used in connection with Subcontractor's performance of the Work, including, but not limited to, sales, use, gross receipts, excise, unemployment, and personal property taxes; and (b) completed the Work and performed all other obligations as required under the Subcontract through the date of its final estimate for payment; (iv) Subcontractor has provided Contractor all: as-built drawings, certifications, maintenance manuals, operating instructions, statement of estimates, reports and other final submittals; software; written guarantees and warranties; and bonds required to be provided by Subcontractor under the Subcontract; (v) Subcontractor has provided a duly executed "Standard Final Estimate for Payment, Unconditional Waiver and Release" in the form annexed as **Exhibit E**; and (vi) **waiver and release of lien rights upon final payment as may be required by statute in the State where the Project is located.** Contractor may require a final waiver and release of liens and claims from Sub-subcontractors. Subcontractor acknowledges and agrees that Owner's payment to Contractor under the Owner Contract of the final payment due Subcontractor under the Subcontract is a condition precedent to Contractor's obligation to pay such amount to Subcontractor. Subcontractor further acknowledges that it is relying on the credit and ability of the Owner to pay for Work performed and not Contractor and accepts the risk that it will not be paid by Contractor for Work performed in the event Contractor is not paid by Owner for such Work.

5.2 Effect of Final Payment.

As provided in **Exhibit E**, Subcontractor's acceptance of final payment from Contractor shall constitute a final waiver and release of all liens and claims by Subcontractor against the Contractor and Owner arising out of or relating to the Subcontract.

Article 6 - SUBMITTALS AND SUBSTITUTIONS

6.1 Submittal Requirements.

Subcontractor shall furnish all required shop drawings, cut sheets, samples, material lists, as-builts, data or other submittals for approval with the required number of copies prior to fabricating or ordering any equipment, material, supply or other item requiring an approved submittal. Submittal data shall be complete, submitted promptly and in such sequence as to ensure scheduled delivery of the applicable equipment, material, supply or other item and to cause no delay in the Work or in the activities of Contractor or its other contractors. All submittals, data, reports and other documents shall be in the English language.

6.2 Submittal Progress Reports.

Within ten (10) days after the Effective Date, Subcontractor shall submit to Contractor a complete list of all submittals required to be furnished by Subcontractor under the Subcontract and their anticipated submittal date. Thereafter, Subcontractor shall furnish Contractor on a monthly basis (or more frequently if requested by Contractor), a progress report on the status of the submittals, including any delay or anticipated delay in their issuance, revision or completion as the case may be.

6.3 Work Progress Documents and As-Builts.

Subcontractor shall maintain construction drawings and other data and documents at the Project site and update them each workday as required to accurately reflect the progress of the Work. Subcontractor shall make such drawings, data and documents available for the Contractor's review at the Project site upon request, and at least on a monthly basis in connection with the Subcontractor's estimates for payment. Subcontractor shall furnish final as-built drawings to Contractor as part of its completion of the Work. Subcontractor's compliance with this Section 6.3 is a condition precedent to the Contractor's obligation to make interim progress payments and final payment to Subcontractor.

6.4 Revisions to Submittals.

Subcontractor shall specifically advise Contractor in writing when transmitting a revised shop drawing or other submittal of any revisions that are in addition to, or differ from, those requested by the Contractor or the Architect on prior versions of the submittal. If Subcontractor does not provide written notice of such additional or different revisions to Contractor, Contractor's and/or Architect's approval of the submittal shall not include such additional or different revisions. Notwithstanding the foregoing, Subcontractor acknowledges that the Project Schedule does not allow for the resubmission of shop drawings and other submittals and that Subcontractor is required to ensure its initial submittals meet the requirements of the Contract Documents. Subcontractor shall be liable for any added costs or damage resulting from its failure to furnish submittals when and as required by the Subcontract, including any re-performance and related costs of correction and any additional costs incurred by the Contractor, Owner or their other contractors.

- 6.5 Professional Certifications.**
When professional certification of performance or design criteria of equipment, materials, systems or other items is required to be furnished by Subcontractor under the Subcontract, Contractor shall be entitled to rely upon such certification and shall not be expected or required to make any independent examination with respect thereto.
- 6.6 Coordination Drawings.**
If applicable to Subcontractor's Work, Subcontractor shall prepare coordination drawings showing exact alignment, physical location and other required details for those portions of its Work that must be coordinated with the work of Contractor, Owner or their other contractors, and shall participate in any related coordination efforts by Contractor.
- 6.7 Contractor's Review of Submittals.**
Contractor's or Architect's review or approval of any Subcontractor submittals shall not relieve Subcontractor of any of its obligations under the Subcontract.
- 6.8 Substitutions.**
Subcontractor shall not substitute any equipment, materials, supplies, specified by the Contract Documents, or any procedures or methods specified by the Contract Documents for performing the Work unless it first submits a written proposal to Contractor for substitution that complies with all applicable Subcontract requirements and Contractor thereafter approves the substitution in writing. Subcontractor acknowledges that unless expressly permitted by the Contract Documents, Subcontractor shall not be entitled to substitute any equipment, materials, supplies, procedures or methods specified by the Contract Documents.
- 6.9 Ownership and Use of Documents**
To the extent not inconsistent with the Owner Contract, all submittals and other documents furnished by Subcontractor under the Subcontract, including any designs, drawings, specifications, calculations, sketches, models, reports, computer programs, computer discs, diskettes or tapes, charts, photographs and other documents, are instruments of Subcontractor's service and all intellectual property rights in such documents shall belong to Subcontractor; provided, however, Subcontractor hereby grants to Contractor and Owner a transferable, irrevocable and perpetual royalty-free license to retain and use all such documents for any purpose in connection with the Project. Subcontractor warrants and represents that any submittal or other document furnished by Subcontractor or any of its Sub-subcontractors do not infringe any patent, copyright, trademark or other intellectual property rights of any person or entity.

Article 7 - LABOR AND SUPERINTENDENCE

- 7.1 Labor.**
Subcontractor shall engage a sufficient number of skilled workers to perform the Work promptly, diligently, and in accordance with the requirements of the Subcontract. If requested by Contractor, Subcontractor shall provide Contractor with copies of its policies regarding the furnishing of labor including copies of all wage agreements, working rules, and regulations, if applicable, affecting the Work. Subcontractor warrants that it is now, and will continue to be, in full compliance with the Immigration Reform and Control Act of 1986 (IRAC), specifically including all of its I-9 employer verification provisions. Subcontractor warrants that it will continue to properly train its staff regarding the execution and retention of these I-9 employment verification forms. Subcontractor warrants that it has an I-9 verification policy which it implements throughout the company. Further, Subcontractor agrees to indemnify Contractor and Owner for any legal fees, public relations costs, work stoppages, and any damages resulting from Subcontractor's employment of any unauthorized workers.
- 7.2 Supervision.**
Subcontractor shall engage a sufficient number of competent supervisory personnel as are necessary to perform the Work in accordance with the requirements of the Subcontract. Subcontractor shall further have a competent superintendent continuously on the Project site during work hours and readily available on call. The superintendent shall be fully acquainted with the Work and shall have the authority to administer the Subcontract on Subcontractor's behalf and shall not be changed except with the consent of Contractor.
- 7.3 Technical Services.**
Subcontractor shall provide all technical personnel required to start-up, test, commission and operate any equipment and to test and use any material, supplies or other items used or supplied by Subcontract in connection with the Work and to instruct Contractor's and Owner's personnel in the operation and maintenance of any such equipment, materials, supplies or other items.
- 7.4 Compliance with Owner Requirements for Supervision.**
Subcontractor shall comply with any superintendence or project management obligations imposed upon Contractor under the Owner Contract to the extent necessary to ensure Contractor's compliance with such obligations to Owner.
- 7.5 Subcontractor Labor Relations.**
Subcontractor shall be responsible for all labor relations matters relating to its performance of the Work and shall at all times maintain harmony among the personnel employed by it and its Sub-subcontractors in connection with the Project with those of Contractor, Owner and their other contractors. Subcontractor shall at all times use all reasonable efforts and judgment as a skilled and experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes. Subcontractor shall notify Contractor as promptly as possible of any actual or potential labor dispute that may affect the Work. If a labor condition threatens the timely completion of any portion of the Work and Subcontractor fails to give satisfactory assurance of its ability to complete the Work in a timely manner, or Subcontractor fails to employ labor that is compatible and in harmony with other labor employed on the Project, or Subcontractor fails to continue to perform the Work without interruption or delay during a strike, picket, walkout, or other work stoppage or slowdown caused by a labor dispute, Contractor may, at its option, terminate Subcontractor's right to proceed with Work for default in accordance with Section 12.1 or employ workmen to perform the affected Work and backcharge Subcontractor the cost thereof.

7.6 **Removal of Workmen.**

If Contractor notifies Subcontractor in writing that any employee or agent of Subcontractor or one of its Sub-subcontractors is incompetent, disorderly, or otherwise unsatisfactory, such person shall immediately be removed, at Subcontractor's cost, from the Work and shall not thereafter be employed in the performance of the Work.

Article 8 - DETERMINATION AND INSPECTION OF THE WORK

8.1 **Determinations of Compliance with Contract Documents.**

Contractor, along with the Owner and Architect, shall determine the requirements of the Contract Documents in connection with the Work and whether the Work has been performed and completed in accordance with those requirements. These determinations shall be final and Subcontractor shall perform the Work consistent with them, subject to dispute resolution under Section 13.4.

8.2 **Access for Inspection.**

Subcontractor shall at all times provide Contractor, Owner, the Architect and their authorized representatives safe and sufficient facilities and access to review or inspect the Work on the Project site and, upon request, at Subcontractor's and its Sub-subcontractor's off-site facilities where any Work is being performed. Contractor shall have no obligation to review or inspect Subcontractor's Work, and any such review or inspection shall not relieve Subcontractor of its obligations under this Subcontract.

8.3 **Rejection of Work.**

Contractor, Owner or the Architect may reject any Work performed or equipment, materials, supplies or other items furnished by Subcontractor that are determined not to comply with the requirements of the Contract Documents. Within forty-eight (48) hours after receiving Contractor's written notice rejecting any Work performed or equipment, materials, supplies or other items furnished, Subcontractor shall take down the rejected Work and remove the rejected equipment, materials, supplies or other items from the Project site. Subcontractor shall promptly re-perform any rejected Work and replace any rejected equipment, materials, supplies or other items as necessary to comply with the requirements of the Contract Documents. If requested by Contractor, Subcontractor shall also correct any work of Contractor, Owner or their other contractors as required in connection with any rejected Work. All costs associated with re-performing rejected Work and replacing rejected equipment, materials, supplies or other items shall be borne by the Subcontractor without any increase in the Subcontract Amount or time for performance of the Work.

8.4 **Compliance with Additional Architectural Instructions.**

Subcontractor shall conform to and abide by any additional specifications, drawings, or explanations furnished by the Architect to illustrate the Work to be done, subject to the provisions of Article 10.

8.5 **Failure of Sources of Supply.**

In the event of a partial failure of the Subcontractor's sources of supply of the equipment, materials, supplies or other items to be furnished under the Contract Documents, whether due to allocation or otherwise, the Subcontractor shall make all reasonable efforts to fully meet its obligations under this Subcontract prior to making any allocations among the Subcontractor's other customers.

Article 9 - PROGRESS AND COMPLETION

9.1 **Commencement of Work.**

Except as otherwise provided elsewhere in the Contract Documents, Subcontractor shall commence the Work in accordance with the Schedule immediately upon receipt of verbal or written notice to proceed from Contractor. Subcontractor shall diligently and continuously prosecute its Work or any portion thereof in an efficient fashion and at a rate so as not to cause delay in the progress of the work of Contractor, Owner, or their other contractors. If requested by Contractor and notice of such requirement is provided by Contractor to Subcontractor prior to the issuance of a Project Work Order, Subcontractor shall maintain and update on a monthly basis (or more frequently if requested) a cost and resource loaded critical path method schedule for the Subcontractor's Work, which depicts Subcontractor's Work activities with logic ties for preceding/restraining work, duration, cost and/or crew size.

9.2 **Compliance with Owner's Scheduling Requirements.**

Contractor shall be entitled to decide the time, order and priority for performance of the various portions of Subcontractor's Work to the extent necessary, in Contractor's judgment, to assure Contractor's compliance with the scheduling requirements imposed on Contractor under the Owner Contract, and to direct the performance of the Work accordingly. Subcontractor shall not be entitled to an adjustment of the Subcontract Amount or an extension of time in connection with any such direction by Contractor as the Subcontractor shall anticipate and provide for such activities in the Subcontract Amount and agreed time for performance.

9.3 **Recovery Plan.**

If Contractor determines that Subcontractor has fallen behind in the progress of the Work or is in danger of falling behind at its then current rate of progress, or is responsible for any Project Schedule delays, Contractor may direct Subcontractor on written notice to take the steps Contractor deems necessary to improve the rate of progress of the Work, including requiring Subcontractor to increase its labor force, number of shifts and/or overtime operations, days of work, or to provide additional equipment or materials. Within forty-eight (48) hours, or such other time as specified in the Project Work Order, of such written notice from Contractor, Subcontractor shall submit for Contractor's approval a recovery plan composed of a schedule and a safety assessment to demonstrate the manner by which Subcontractor will implement the required steps to attain the required rate of progress while maintaining an injury free environment. Subcontractor will implement the recovery plan immediately upon Contractor's approval. If Contractor determines that Subcontractor's plan will not attain the required rate of progress, Subcontractor will take the steps Contractor directs in that regard and perform the Work accordingly, all without additional cost to the Contractor. If Subcontractor fails to submit or follow a recovery plan as required or perform the Work in accordance with Contractor's directives in the event Subcontractor's recovery plan is not approved, Contractor may, following twenty-four (24) hour notice, or such other time as specified in the Project Work Order to Subcontractor, perform the Work as Contractor deems necessary to attain the required rate of progress. Contractor may deduct from any payment due Subcontractor or collect directly from

Subcontractor on demand all Damages incurred or suffered by Contractor in connection with Subcontractor's delay in the progress of the Work or to the Project Schedule, including any Damages assessed against Contractor under the Owner Contract.

9.4 Substantial and Final Completion of Work.

The Work will be deemed substantially and finally complete as of the dates indicated in the Certificate of Substantial Completion and Certificate of Final Completion, respectively, or earlier date agreed by Contractor in a written notice to Subcontractor.

9.5 Punchlist.

When Subcontractor deems its Work substantially complete, Subcontractor shall give written notice thereof to Contractor along with a punch list of remaining items to be performed to achieve final completion. Subcontractor shall revise its punch list to include any items Contractor advises Subcontractor should be included on that list and shall perform the punch list Work as directed by Contractor.

9.6 Use and Acceptance of Portions of Work Prior to Final Completion of Work.

At any time prior to final completion of all the Work, Contractor may temporarily take possession of and use any part of the Work. Contractor may return any such Work to Subcontractor for completion. The Contractor may at any time request in writing that Subcontractor permit Contractor to accept any part of the Work and Subcontractor shall make that part of the Work available for Contractor's inspection as soon as reasonably possible, and in no event later than five (5) days following the request. If Contractor agrees, following the inspection by the Owner and/or Architect, that the part of the Work in question can be accepted, Contractor shall issue a Certificate of Completion for such portion of the Work. The use or acceptance of part of the Work by Contractor as provided in this Section 9.6 shall not relieve Subcontractor of any of its responsibilities under the Subcontract. Subcontractor shall not use any portion of the Work other than as approved in writing by Contractor. In the case Subcontractor uses any of the Work; Subcontractor shall recondition such portion of the Work to meet the requirements of the Subcontract.

Article 10 - CHANGES AND IMPACTS

10.1 Changes in the Work.

Contractor shall have the right in its discretion at any time prior to final completion of the Work on written notice to Subcontractor (and without notice to Subcontractor's sureties), to direct a "Change". In the event of a Change, the Subcontract Amount and/or Subcontractor's time for performance shall be adjusted, if at all, by way of a written amendment or "Change Order" to the Subcontract as set forth in Sections 10.2 and 10.3. Unless directed by Contractor in writing to proceed immediately with a Change, Subcontractor shall submit a written request to Contractor for a Subcontract adjustment as provided in Section 10.2 prior to proceeding with a Change.

10.2 Change Order Requests.

(a) Contractor Initiated Change: For any Contractor initiated Change, Subcontractor shall submit its written request for a Change Order within forty-eight (48) hours, or such other time as specified in the Project Work Order, of receipt of Contractor's Change notice. Subcontractor's request shall include documentation sufficient to enable the Contractor to determine the factors necessitating the adjustment(s) being requested. If Contractor decides to proceed (or Subcontractor has already proceeded with the written direction of Contractor) with the Change and a Subcontract adjustment is warranted, Contractor shall issue a written Change Order to Subcontractor adjusting the Subcontract either: (i) as requested by Subcontractor; or, (ii) in the event the Contractor disagrees with Subcontractor's statement as to the effect of the Change, Contractor shall issue a Change Order to Subcontractor: (a) on terms Contractor reasonably deems appropriate. Subcontractor shall thereafter perform the Work in accordance with the Change Order, subject to dispute resolution under Section 13.4. Subcontractor shall have no right to suspend or delay the performance of its obligations under the Subcontract while the Contractor is reviewing Subcontractor's adjustment request or if Subcontractor disagrees with the Change Order issued by Contractor.

(b) Owner Initiated Change: For any Change initiated by the Owner or Architect, Subcontractor shall submit its written request for a Change Order no later two (2) days prior to the expiration of the time period specified in the Owner's Contract for the submission of such a request and shall include all information required under the Owner Contract. Contractor shall process Subcontractor's Change Order request in accordance with the change order process in the Owner Contract. Subcontractor's entitlement to additional compensation or a time extension in connection with a Change initiated by the Owner or Architect shall be limited to the cost and schedule adjustments approved by Owner for Subcontractor's Work in Owner's change order to Contractor under the Owner Contract.

(c) Contractor may at any time in its discretion decide not to proceed with a Change without obligation to Subcontractor.

10.3 Requirements for Pricing Changes.

Unless the Owner Contract requires different pricing, the amount of additional compensation paid to Subcontractor shall be determined by one of the following methods at the sole discretion of the Contractor:

10.3.1 Lump sum price in an amount proposed by Subcontractor (properly itemized and supported by sufficient substantiating data to permit evaluation) and accepted by Contractor;

10.3.2 Unit Prices or Alternates as set forth in the Subcontract Agreement (if applicable); or

10.3.3 Time and material basis.

If a Change is performed by Subcontractor on other than a lump sum basis, Subcontractor shall furnish each day to Contractor certified copies of all time sheets, receiving and inspection reports and shall provide Contractor with such purchase orders, invoices, Subcontractor quotes and other documents and records as may enable Contractor to verify, to its reasonable satisfaction, the costs or savings reasonably incurred by Subcontractor in effecting the Change. All labor, services, equipment, materials, supplies and other items provided by Subcontractor on other than a lump sum basis shall be purchased at competitive market prices and reflect Subcontractor's actual cost

after rebates and discounts. Subcontractor acknowledges and agrees that any request for an adjustment will be totally inclusive of all additional costs and time extensions related to the Change, whether resulting from delays, inefficiencies, interferences or any other impact to Subcontractor's performance of the Work. Subcontractor's failure to request a cost or time adjustment in connection with a Change shall constitute a representation by Subcontractor that no such adjustment is required and shall constitute a waiver by Subcontractor of its right to any such adjustment. Subcontractor's failure to timely submit a proposed credit for deleted Work shall render Contractor's and/or Owner's or Architect's determination of the proper credit final and binding.

10.4 Change Order Directive.

If Contractor and Subcontractor do not agree as to the appropriate adjustment to the Subcontract Amount and/or Subcontractor's time for performance in connection with a Change, Contractor may issue a "directive" that directs Subcontractor to proceed with the Change and leaves the adjustment to the Subcontractor Amount and/or Subcontractor's time for performance open. Subcontractor shall proceed with the Change and provide Contractor the information and documents required under Section 10.3 in connection with Changes performed on other than a lump sum basis to support its additional costs and information and documents to support its request for a time extension. When the Change has been completed, Contractor shall determine the appropriate adjustment, or for claims resulting from the Owner or Architect, shall refer the matter to the Architect or Owner's representative to determine the appropriate adjustment to the Subcontract Amount and/or Subcontractor's time for performance. Their decision shall be binding on Subcontractor unless Subcontractor notifies the Contractor in writing that it disputes the decision within the shorter of: (i) twenty-four (24) hours before the expiration of the time allowed, if any, under the Owner Contract to contest the decision; or (ii) forty-eight (48) hours after Subcontractor's receipt of the decision. If Subcontractor properly disputes the decision, the matter shall be subject to dispute resolution under Section 13.4.

10.5 Impacts to the Work.

Subcontractor shall make all claims for additional compensation, and extensions of time due to acceleration, disruption or inefficiency or other adverse impacts to the Work or otherwise to Subcontractor's performance under the Subcontract within two (2) business days, or such other time as specified in the Project Work Order, business days following the occurrence of the event giving rise to the claim and in such manner so as to permit the Contractor to satisfy the requirements of the Owner Contract for the submission of such claim. All such claims shall be supported by appropriate documentation and, in the case of requests for extensions of time, sufficient detail to demonstrate that the impact is to work activities on the critical path. If the Subcontractor fails to submit a claim to the Contractor as required and as a consequence Contractor is prejudiced in its ability to present such claim under the Owner Contract, then Subcontractor's entitlement to a Subcontract adjustment relating to such claim shall be equally prejudiced. Contractor's liability to the Subcontractor for any adverse impact to the Work or otherwise to Subcontractor's performance under the Subcontract attributable to the Owner, Architect or their separate contractors is limited to the cost, schedule or other relief, if any, actually granted by the Owner. Contractor's liability to the Subcontractor for any adverse impact to the Work or otherwise to Subcontractor's performance under the Subcontract attributable to Contractor's other subcontractors or suppliers for the Project is limited to the amount, if any, actually recovered from such other subcontractors or suppliers.

10.6 Requirements for all Impact Claims.

Subcontractor's compliance with the notice and time in Section 10.4 shall be a condition precedent to Subcontractor's entitlement to a Subcontract adjustment and Subcontractor waives and releases any claim for additional compensation or an extension of time in the event that Subcontractor does not so comply.

10.7 Contractor's Receipt of Claims Does Not Create a Presumption of Validity.

Nothing done or not done by Contractor or Owner shall be construed as an acknowledgment or acceptance of the accuracy or validity of any Subcontract adjustment requested by Subcontractor until a signed Change Order is issued to Subcontractor by Contractor.

10.8 Allowable Mark-Ups.

Subcontractor's overhead and profit mark-up percentages on additional costs incurred in connection with Changes and impacts to the Work for which Subcontractor is entitled to a Subcontract adjustment shall in no event exceed the mark-ups allowed to Contractor for changes under the Owner Contract. Subcontractor shall not apply a mark-up to any costs the Owner Contract provides are not subject to mark-up.

10.9 Required Documentation in Support of Change Orders or Claims.

Subcontractor shall allow Contractor to review any data Contractor may reasonably request to assist the Contractor, Owner and/or Architect to determine the validity of a Subcontract adjustment requested by Subcontractor. Data that may be reviewed includes, but is not limited to: (i) Subcontractor's payroll records for each employee working on the Project (which shall contain the employee's name, address, social security number, hourly wage, daily and weekly number of hours worked, gross wages earned, deductions made and actual wages paid); (ii) Subcontractor's Project estimate(s) and supporting calculations; (iii) Subcontractor work schedules and related documents; and (iv) Sub-subcontractor related documents (which Contractor may obtain from Subcontractor or directly from the Sub-subcontractor).

Article 11 - DELAYS

11.1 Liability for Delays.

Subcontractor shall be liable to Contractor for any and all loss or damage Contractor sustains as a result of Subcontractor's delay in the safe performance of the Work or delay to the Project attributable to Subcontractor, including any amounts due from Contractor to Owner under the Owner Contract. Permitting the Subcontractor to continue to perform its Work after the agreed time for performance has expired shall not be construed as or constitute a waiver by Contractor of any claims for loss or damage it may have against Subcontractor as a result of such delay.

11.2 Liquidated Damages.

Subcontractor shall be liable for any specific liquidated damages negotiated and agreed to by Contractor and Subcontractor in the Project Work Order and that portion of any liquidated damages payable by Contractor under the Owner Contract attributable to Subcontractor's failure to discharge one or more of its obligations when and as required under the Subcontract. Subcontractor acknowledges that any liquidated damages payable by it are reasonable and appropriate in light of the probable increased costs and other anticipated damage to

Contractor in the event of the performance failure by Subcontractor in connection with which such damages become payable. Subcontractor agrees to and does hereby waive any defense as to the validity or enforceability of any liquidated damages payable by it under the Subcontract on the grounds that such damages are void as penalties or are not reasonably related to actual damages, whether the damages were specifically established by Contractor and Subcontractor under the Subcontract or were established by Contractor and Owner under the Owner Contract. Subcontractor further agrees that Contractor shall be entitled to recover from Subcontractor any Damages Contractor incurs as a result of Subcontractor's failure to discharge a Subcontract obligation that exceeds any liquidated damages paid by Subcontractor in connection with that failure.

11.3 Work Delays and Interferences.

Except as provided under Article 10.5 the full and complete compensation to, and sole and exclusive remedy of, Subcontractor in the event of any delay, interference or other adverse impact to the Work shall be an extension of time for performance of the Work. Subcontractor acknowledges that in agreeing to the Subcontract Amount it has assessed the potential impact of the limitations in this Section 11.3 on its ability to recover additional compensation in connection with a Work delay or interference and agrees that these limitations will apply regardless of the accuracy of Subcontractor's assessment or actual costs incurred by Subcontractor.

11.4 Force Majeure.

Subcontractor shall not be liable for a delay in the performance of one or more of its obligations under the Subcontract due to events of force majeure, but only to the extent and upon the conditions that: (i) Subcontractor's written notice to Contractor of the event for which it seeks relief: (a) conspicuously indicates in the notice's subject heading, "CLAIM FOR FORCE MAJEURE RELIEF"; (b) meets the force majeure notice requirements under the Owner Contract; and (c) is provided to Contractor no later than two (2) business days prior to the date Contractor is required to submit such notice to Owner under the Owner Contract. If the Owner Contract does not contain a force majeure provision, Subcontractor shall provide its written notice to Contractor no later than three (3) days after the occurrence of the event with a description of the particulars of the event, the estimated duration of the event or the effect thereof and the probable impact on Subcontractor's performance. Subcontractor shall so far as possible avoid and/or remedy the effects of any event of force majeure on its performance with all reasonable dispatch, and shall use its best efforts to eliminate and mitigate the consequences thereof. Subcontractor's relief for a force majeure event shall be limited to the force majeure relief Contractor actually receives from the Owner under the Owner Contract in connection Subcontractor's Work.

Article 12 - TERMINATION

12.1 Termination for Default.

Subcontractor shall be in default under this Subcontract if Subcontractor: (a)(i) becomes insolvent or is unable to meet its debts as they mature; (ii) admits its inability to pay its debts generally; or (iii) institutes or has instituted against it under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, a proceeding which seeks the adjustment, protection or composition of Subcontractor or its debts or an order providing for the appointment of a receiver, trustee, or other similar official for Subcontractor or a substantial part of its property; or (b)(i) fails to supply enough properly skilled workmen or proper materials or equipment or to make sufficient progress, in each case so as to endanger the timely or proper performance of the Work; (ii) abandons the Work; (iii) repeatedly or persistently disregards Applicable Law or Contractor's instructions; or (iv) otherwise breaches any provision of the Subcontract. Subject to Subcontractor's right to notice and an opportunity to cure for certain defaults as provided below, Contractor may on written notice to Subcontractor at any time after it is in default: terminate Subcontractor's right to proceed with all or part of the remaining Work, take possession of the terminated Work and any and all of Subcontractor's materials, tools, appliances, equipment and other items at the Project site and finish the terminated Work by whatever method Contractor may deem expedient. Contractor shall deduct all Damages incurred by Contractor as a result of Subcontractor's default from the Subcontract balance. In the event the Subcontract balance is insufficient to cover the Damages, Subcontractor shall pay the difference to the Contractor within ten (10) days of Contractor's demand for payment of same. If the Subcontract balance exceeds the Damages, the difference shall be paid to Subcontractor, subject to Owner's acceptance of the Work as provided in Section 12.3. Any default termination by Contractor of Subcontractor for default that is subsequently determined to have been erroneous shall be deemed to have been termination for Contractor's convenience under Section 12.4 and the party's rights and obligations shall be adjusted accordingly. Prior to terminating Subcontractor's right to proceed with Work due to Subcontractor's default under clauses (b)(i), (ii), (iii) or (iv) of this Section 12.1, Contractor will provide Subcontractor written notice of the default. Contractor may terminate Subcontractor's right to proceed with Work if Subcontractor fails to commence and continue to cure the default with diligence and promptness, and provide reasonable evidence of such cure to Contractor within forty-eight (48) hours of receipt of Contractor's written notice.

12.2 Execution of Remedy Under Subcontractor's Surety Performance Bond or Guarantee.

In the event Subcontractor's performance under the Subcontract is secured by a surety performance bond or other guarantee of performance, Contractor may, in the event of a Subcontractor default, demand that Subcontractor's surety or guarantor complete performance of the Work. In the event the surety or guarantor fails to perform and complete Subcontractor's Work and other obligations in accordance with the Subcontract and bond or guarantee (as applicable), Contractor may proceed to remedy Subcontractor's default in accordance with Section 12.1. To the extent Contractor's damages exceed the Subcontract balance at time the Subcontract is terminated, Contractor shall be entitled to pursue its remedies against Subcontractor's surety or guarantor for breach of its bond or guarantee obligations.

12.3 Cessation of Payments Upon Termination.

If the Contractor terminates Subcontractor's right to proceed with all or part of the remaining Work, Subcontractor shall not be entitled to further payment, if any, until Subcontractor's Work has been finally completed and accepted by Owner.

12.4 Termination for Convenience.

Contractor may upon written notice to Subcontractor, without cause and without prejudice to any other right or remedy, elect to terminate the remaining Work for Contractor's convenience. The termination shall be effective in the manner specified in Contractor's notice. Unless Contractor's notice directs otherwise, Subcontractor shall immediately discontinue performance of the Work and the placing of

orders for equipment, materials, supplies and other items and demobilize from the Project. Subcontractor shall take the steps necessary to preserve and protect Work in progress and shall use its best efforts to mitigate its costs in connection with the termination. Contractor shall pay Subcontractor a termination payment as Subcontractor's sole and exclusive remedy in connection with Contractor's convenience termination. The termination payment shall be comprised of: (i) amounts invoiced and due for Work performed but not yet paid; (ii) payment for Work satisfactorily completed but not yet invoiced by Subcontractor prior to the termination; (iii) retainage held by Contractor at the date of termination; and, (iv) all reasonable, actual termination costs incurred by Subcontractor in terminating the Work (but excluding any and all costs and expenses incurred by Subcontractor from and after the date of termination for those of its employees who are not directly performing required termination activities); provided, that if the termination was effected by Contractor due to the elimination or termination of work by Owner under the Owner Contract or other Owner action, or, as a result of the order of a court or public authority, then Subcontractor's termination payment shall be limited to the amount paid by Owner to Contractor for the terminated Work under the Owner Contract, less Contractor's costs to obtain that amount from Owner. In no event shall Subcontractor be entitled to recover any profit or overhead on terminated Work. Subcontractor's termination payment under this Section 12.4 will constitute its final payment for the Work and will be processed and become due to Subcontractor in accordance with Section 5.1.

Article 13 - DISPUTES

13.1 Contractor to Make Initial Decision on Disputes.

Except as otherwise provided in the Subcontract, Contractor shall initially decide all disputes arising out of the Subcontract. Contractor shall reduce its decision to writing and furnish a copy thereof to Subcontractor. Contractor's decision shall be final and conclusive unless Subcontractor advises Contractor in writing within forty-eight (48) hours of receiving the decision of the bases for its disagreement with the decision. Subcontractor agrees that if it does not contest the Contractor's decision within the time and in the manner required under this Section 13.1, Contractor's decision shall be final and conclusive and the Subcontractor shall be deemed to have waived any right to contest the decision. Contractor decisions properly contested by Subcontractor shall be resolved in accordance with Section 13.4.

13.2 Continued Performance Required.

Subcontractor acknowledges the importance of performing and completing the Work and its other obligations under the Subcontract in a timely manner. Subcontractor agrees that its rights in connection with any claim or dispute with Contractor in connection with the Subcontract shall be determined as provided in this Article 13 or elsewhere in the Subcontract, and that it shall not be entitled to suspend or otherwise delay its performance and completion of the Work or the performance of its other obligations under the Subcontract based on any alleged breach by Contractor or claim or dispute between the parties, regardless of whether such breach, claim or dispute is the subject of dispute resolution between Contractor and Subcontractor.

13.3 Appeals Under the Contract Documents.

If Subcontractor wishes to appeal a decision rendered under the Contract Documents by the Architect, Owner or another Owner representative that adversely affects Subcontractor's interests, Subcontractor may do so, provided Contractor's interests are unaffected, and Subcontractor bears all costs associated with the appeal and assumes sole responsibility for its prosecution.

13.4 Method of Dispute Resolution.

Claims and disputes between Contractor and Subcontractor arising out of or in connection with the Subcontract or the Work shall be resolved by litigation unless Contractor, at its sole option, advises Subcontractor in writing prior to the institution of litigation with respect to a claim or dispute, or within thirty (30) days after either party has instituted litigation with respect to the claim or dispute that Contractor elects to have the claim or dispute resolved by arbitration. In such event, Subcontractor shall be bound by Contractor's election and any litigation filed shall be stayed by stipulation of the parties pending the conclusion of the arbitration proceedings. The arbitration proceedings shall be conducted pursuant to the Construction Industry Arbitration Rules issued by the American Arbitration Association then in effect. The parties shall afford each other informal discovery consistent with the discovery provisions of the Federal Rules of Civil Procedure, including the production of all documents related to the claim or dispute at issue and the deposition of witnesses having knowledge of facts pertaining to the claim or dispute at issue.

13.5 Governing Law, Jurisdiction and Venue.

This Subcontract shall be governed by and construed in accordance with the laws of the state where the Project being performed is located, excluding the conflicts of laws principles thereof; provided, however, that in the event the Contractor and Owner have elected to have the laws of another state govern the Owner Contract, then this Subcontract shall be governed by and construed in accordance with the laws of such state, excluding the conflicts of laws principles thereof. Subject to Section 13.6, for any action or proceeding involving claims and disputes between Contractor and Subcontractor arising out of or in connection with the Subcontract or the Work, Contractor and Subcontractor expressly and unconditionally: (a) agree that the presiding federal or state court in the district or state where the Project is being performed is located shall have exclusive jurisdiction over the action or proceeding; and (b) waive the right to a trial by jury in the action or proceeding. If Contractor elects to resolve a claim or dispute by arbitration, the arbitration shall be venued in the state and county court where the Project being performed is located.

13.6 Joinder in Related Proceedings.

In the event Contractor is involved in a separate arbitration, litigation, mediation or other legal proceeding in which any aspect of the Subcontractor's Work or entitlement to payment is at issue, or questions of law or fact common to the Subcontractor's performance under the Subcontract are involved; or, if complete relief cannot be afforded in such proceeding without the Subcontractor's participation therein, Subcontractor hereby consents, upon written demand by Contractor, to its consolidation or joinder in that proceeding to the applicability of any rules or procedures applicable to such proceeding; and hereby waives any objections to the location or forum in which the proceeding is pending. In the event Subcontractor has initiated litigation against Contractor at the time Contractor's demand for consolidation or joinder is received, and that proceeding cannot be consolidated with the proceeding in which the Contractor is involved, Subcontractor agrees to dismiss or, in the event dismissal would prejudice Subcontractor's rights, stay the litigation.

Article 14 - REGULATORY COMPLIANCE

14.1 Compliance with Applicable Law Generally.

Subcontractor, its Sub-subcontractors, and all Work provided under the Subcontract shall strictly comply with Applicable Law. Subcontractor shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the Indemnified Parties against and from any and all Damages resulting from or arising out of or in connection with any actual or alleged violation of Applicable Law by Subcontractor or its Sub-subcontractors concerning the Work. Subcontractor's compliance with Applicable Law shall include but not be limited to the specific compliance required under this Article 14.

14.2 Safety Compliance.

Subcontractor shall support and participate in the creation and maintenance of an injury free environment and shall be responsible for safety precautions and training programs and shall take all actions necessary to provide for the safety of persons and property on or off the project site in connection with the performance of the Work. Subcontractor shall comply with all Subcontract requirements relating to safety, including as set forth in the Subcontract Agreement and the Owner Contract, and all requirements under Applicable Law relating to safety, including the Williams-Steiger Occupational Safety and Health Act of 1970. Subcontractor shall immediately report in writing to Contractor any injury to any Subcontractor or Sub-subcontractor employee, or any property damage at the Project site in connection with Subcontractor's or one of its Sub-subcontractor's activities.

14.3 Environmental Compliance.

Subcontractor shall comply with Contractor's environmental requirements as set forth in **Exhibit F** and Applicable Law relating to the protection or preservation of the environment from hazardous material or waste, toxic substance, pollution or contamination or the discharge or release of, or exposure to, materials (including energy, odors, noise, soil, dust, etc.) into the environment. Subcontractor shall not under any circumstance apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to air, water or noise pollution or similar environmental laws or regulations relating to the Subcontract or the performance thereof, without Contractor's prior written approval.

14.4 Tax Compliance.

Subcontractor agrees to pay all taxes, fees and contributions on or measured by the income, gross receipts or assets of Subcontractor or any of its Sub-subcontractors and all taxes, fees and contributions on or measured by employees or other labor costs of Subcontractor or any of its Sub-subcontractors, including without limitation all payroll or employment compensation tax, social security tax or similar taxes for Subcontractor's or any of its Sub-subcontractor's employees. Subcontractor further agrees to pay all sales and use taxes, and all import, export and other customs duties, charges, levies and fees imposed or incurred in connection with the shipping and delivery of any equipment, materials, supplies or other items required for the Work to the Project site. In the event that Contractor should pay or be required to pay any of the foregoing items or any portion thereof, Contractor may deduct the amount from the Subcontract balance or invoice Subcontractor therefor. Subcontractor shall pay any such Contractor invoice in full within five (5) days of receipt.

14.5 Affirmative Action and Non-Discrimination.

Subcontractor shall comply with Contractor's affirmative action programs and any affirmative action obligations imposed upon Contractor under the Owner Contract. Subcontractor shall comply with all equal opportunity employment requirements, and shall not, under any circumstances, discriminate against any person because of race, creed, color, age, sex, national origin, marital status, sexual orientation, status with regard to public assistance, or the presence of a physical, sensory or mental disability. *Hillphoenix Company AMS and any of its covered subcontractors shall abide by the Equal Employment Opportunity Clause in Section 202 of Executive Order 11246, as amended, and the implementing rules and regulation of the Office of Federal Contract Compliance including the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Likewise, when applicable, Hill Phoenix Company - Phoenix "AMS" and/or its covered subcontractors agrees to comply with the provisions of 29 CFR Part 471, Appendix A to Subpart A.*

14.6 Harassment and Offensive Behavior.

Contractor is committed to maintaining a work environment that is free of harassment and offensive behavior, and such behavior is strictly prohibited by Contractor. Harassment and offensive behavior prohibited by this policy includes but is not limited to requests to engage in illegal, immoral, or unethical conduct, or negative comments or actions based on any person's race, creed, color, age, sex, national origin, marital status, sexual orientation, status with regard to public assistance, or the presence of a physical, sensory or mental disability. Neither Subcontractor nor any of its Sub-subcontractor's shall engage in any harassment or offensive behavior in connection with the Subcontract or the Project. Subcontractor shall immediately address any claim of harassment or offensive behavior involving it or its Sub-subcontractors, properly discipline any person determined to have engaged in such conduct, including dismissal or removal from the Project where appropriate, and use its best efforts to ensure that such conduct does not reoccur.

14.7 Code of Conduct.

Subcontractor agrees that it shall operate and its employees shall conduct themselves in a manner consistent with the principles contained in the Code of Conduct attached as **Exhibit B**, as relevant to the Work.

Article 15 - BONDING AND SUBCONTRACT PERFORMANCE INSURANCE

15.1 Payment and Performance Bonds.

If bonds are required by the Project Work Order, Subcontractor shall furnish separate performance and payment bonds to secure its obligations under the Subcontract, each with a penal amount equal to one hundred percent (100%) of the Subcontract Amount. The bonds shall be written in a form acceptable to Contractor. Subcontractor shall pay the premium for the bonds and the cost thereof is included in the Subcontract Amount. Unless more stringent requirements are imposed by the Owner Contract, all bonds issued by Subcontractor shall be issued by a surety acceptable to Contractor that is listed in the most current Federal Register listing of approved surety companies (Federal Register, Vol. 55, Department of Treasury Circular 570) with an A.M. Best Rating of "A-" or better, and is authorized to issue the bonds in the state where the Project is located.

Article 16 - ENCUMBRANCES

16.1 No Liens or Encumbrances.

Subcontractor warrants and guarantees free and clear title to the Work and all equipment, materials, supplies and others items supplied by Subcontractor for incorporation into the Work shall pass to Contractor and Owner, and that the Work, the Project site and the Project and any and all interests and estates therein and any and all improvements and materials placed on the Project site by Subcontractor or its Sub-subcontractors shall be free and clear of, all liens, claims, security interests and other encumbrances made by, through or under Subcontractor or any of its Sub-subcontractors. In the event of any nonconformity with the requirements of this Section 16.1, Subcontractor shall promptly: (i) defend Contractor's and Owner's title to the Work, the Project site and Project and such interests, estates, improvements and materials, as the case may be; and (ii) remove and discharge any such lien, claim, security interest or other encumbrance by paying the claimant, by posting a bond or other instrument as required by Applicable Law, or by providing Contractor collateral that is satisfactory in form and substance to it Contractor and Owner to fully indemnify and hold harmless Contractor and Owner from and against any Damages resulting from such encumbrance. Contractor may withhold from any amount due or to become due to Subcontractor an amount sufficient to remove and discharge such encumbrance until Subcontractor has removed and discharged such encumbrance as required by Section 16.1. If Subcontractor has not removed and discharged a lien, claim, security interest or other encumbrance covered by this Section 16.1 within ten (10) days after it has been made or filed, Contractor may cause the encumbrance to be removed and discharged with the moneys withheld, or by posting a bond, whereupon for purposes of this Subcontract such moneys or bonding costs (along with other costs incurred by Contractor in connection with the encumbrance), shall be deemed to have been paid to Subcontractor hereunder.

16.2 Subcontractor and Sub-subcontractor Information.

In addition to the requirements of Section 4.5, Subcontractor shall, as often as requested by Contractor, furnish a statement identifying each party that has furnished or is furnishing any services, labor, equipment, materials supplies or other items to Subcontractor in connection with the Project, along with other pertinent information including such party's address, the value of and the party's contract, the amount paid to date and the amount due or to become due thereunder. Contractor may also request Subcontractor from time to time to obtain similar information from one or more of its Sub-subcontractors and Subcontractor shall do so and provide it to Contractor within five (5) days of Contractor's written request. Contractor may alternatively request such information directly from one or more Sub-subcontractor and Subcontractor expressly consents to Contractor contacting its Sub-subcontractors for this purpose. Subcontractor shall furnish Contractor within five (5) days of Contractor's written request evidence that Subcontractor has paid all amounts incurred by the Subcontractor for services, labor, equipment, materials supplies and other items used or furnished by Subcontractor in connection with the Project, or other liability incurred by Subcontractor for the purpose of performing the Work.

16.3 Assignment and Delegation Not Permitted Without Prior Written Consent.

Subcontractor acknowledges and agrees that none of its rights or obligations under the Subcontract may be assigned or delegated without the prior written consent of the Contractor. Any assignment or delegation by Subcontractor of a right or obligation hereunder without Contractor's prior written consent shall be null and void and of no force or effect.

Article 17 - WARRANTIES AND GUARANTEES

17.1 Work Warranties and Guarantees and Correction of Defects or Deficiencies.

Subcontractor warrants and guarantees that all Work (i) shall be free of defects in design, workmanship and material, (ii) shall be performed in accordance with the generally accepted industry codes and standards applicable to the Work, (iii) shall be performed in a good and workmanlike manner; and (iv) shall strictly conform to the requirements of the Subcontract (including any warranties required of the Contractor under the Owner Contract to the extent applicable to the Work). Upon receipt of written notice of a defect or deficiency in the Work, Subcontractor shall at Contractor's sole option and at no cost to Contractor, promptly repair, replace, or re-perform such defective or deficient Work so that it conforms to the requirements of the Subcontract. Subcontractor's obligation to repair, replace, or re-perform defective or deficient Work under this Section 17.1 shall extend: (i) for the warranty or guarantee period(s) specifically established in the Project Work Order; or, (ii) if no such warranty or guarantee period(s) has been established, for the warranty period established for Contractor's work under the Owner Contract. If Contractor deems it inexpedient for Subcontractor to repair, replace, or re-perform defective or deficient Work, Contractor may make a deduction from the Subcontract Amount in lieu of such repair, replacement and re-performance, as determined by Contractor. Subcontractor shall provide information and execute documents as requested or required by Contractor to assign any Subcontractor warranty or guarantee to Owner or another party.

17.2 No Period of Limitation Established.

Nothing contained in Section 17.1, and no warranty or guarantee period(s) specifically established in the Subcontract shall be construed to establish a period of limitation on any of Subcontractor's obligations under the Subcontract, other than Subcontractor's obligation to repair, replace, or re-perform defective or deficient Work during the period in question as provided in Section 17.1.

17.3 Sub-subcontractor Warranties and Guarantees.

Subcontractor shall require warranties and guarantees from its Sub-subcontractors similar to those provided by Subcontractor under this Section 17.1. Subcontractor's Sub-subcontractor's warranties and guarantees shall be expressly stated to be for the benefit of and be enforceable by Contractor and Owner and assignable to Contractor and Owner on Contractor's demand therefor.

17.4 **Backcharges.**

If Contractor notifies Subcontractor in writing at any time during the performance of the Work to correct defective or deficient Work, and Subcontractor states, or by its actions, indicates that it is unable or unwilling to proceed with corrective action in a reasonable time, Contractor may upon written notice to Subcontractor accomplish the required corrective action by the most expeditious means available and backcharge Subcontractor for the costs incurred.

17.5 **Costs and Damages Resulting From Defects or Deficiencies in the Work.**

Subcontractor shall be liable for all Damages incurred by Contractor and its other contractors as a result of defects or deficiencies in the Work. This liability is in addition to Subcontractor's repair, replacement and re-performance obligations under Section 17.1.

Article 18 - INDEMNITY AND INSURANCE

18.1 **Indemnity.**

In addition to any other defense, indemnity or hold harmless obligation imposed on Subcontractor by the Subcontract or Applicable Law, Subcontractor shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the Indemnified Parties from and against any Damages involving the following:

- (a) Any actual or alleged infringements of any patent, trademark, copyright or other intellectual property or proprietary right by Subcontractor, its Sub-subcontractor or the Work furnished by Subcontractor;
- (b) Injury or death to any person, or damage to or destruction of any property (including loss of use thereof), or any other damage or loss by whomsoever suffered resulting from or arising out of or in connection with the Work, whether or not any such damage or loss is due to the negligence of any kind or character or other fault of any one or more of the Indemnified Parties or breach of any statutory duty, contractual obligation or other obligation by one or more of the Indemnified Parties.
- (c) Any failure of the Subcontractor or the Work to comply with the requirements of the Subcontract;
- (d) Any lien, claim, security interest or other encumbrance made or filed against: (i) the Work, Project site and the Project; any and all interests and estates therein and any and all improvements and materials placed on the Project site by Subcontractor or its Sub-subcontractors; or, (ii) any payment, performance, lien prevention, or lien discharge bond posted by any of the Indemnified Parties; and,
- (e) Any hazardous material or waste, toxic substance, pollution or contamination brought to or generated on the Project site by Subcontractor or its Sub-subcontractor, or used, handled, transported, stored, removed, remediated, disturbed or disposed of by Subcontractor or its Sub-subcontractor.

The foregoing obligations of Subcontractor shall not be affected or limited in any way by any insurance required of or provided to Subcontractor under the Subcontract. If a temporary restraining order or preliminary injunction is granted in any proceeding involving a claim, demand or cause of action covered by clause (a) above, Subcontractor shall make every reasonable effort at its expense to secure the suspension of the restraining order or injunction by giving a satisfactory bond or otherwise. If any portion of the Work is held in such proceeding to constitute an infringement and the use thereof is permanently enjoined, Subcontractor shall at its expense promptly secure a license authorizing Contractor's and Owner's continued use of such Work or, if Subcontractor is unable to secure such license, replace the affected Work or modify it so that it is non-infringing. Subcontractor shall not be required to defend, indemnify and hold harmless any Indemnified Party for Damages resulting, or to result from that Indemnified Party's sole negligence or intentional misconduct.

18.2 **Insurance.**

Subcontractor shall strictly comply with all of Contractor's standard insurance requirements set forth in **Exhibit C** to the Subcontract.

18.3 **Environmental Insurance.**

If Subcontractor's Work involves the remediation, removal or disposal of any hazardous material or waste, toxic substance, pollution or contamination, Subcontractor shall also strictly comply with all of the environmental insurance requirements set forth in **Exhibit F** to the Subcontract.

Article 19 - MISCELLANEOUS REQUIREMENTS AND SPECIAL PROVISIONS

19.1 **Headings for Convenience Only.**

The Article and Section headings in these terms and conditions have been inserted for convenience or reference only and shall not in any manner affect the construction, meaning or effect of anything contained herein nor govern the rights and liabilities of the parties.

19.2 **Calculation of Time Periods.**

Unless specifically stated otherwise, all references in the Subcontract to days, or requirements that action be taken or notice be provided within a certain number of days, are to calendar days.

19.3 **Audit and Record Retention.**

Subcontractor's records related to the Project and the Subcontract shall be subject to audit and shall be made available to Contractor for that purpose upon ten (10) days prior written notice. To the extent the foregoing audit provisions are different than, or inconsistent with, any audit provisions found in the Owner Contract, the more stringent requirement shall control. Unless the Contract Documents or Applicable Law requires a longer period, Subcontractor shall maintain its entire Project and Subcontract related records, financial and otherwise, for a period of three (3) years after the Contractor achieves final completion of its work at the Project.

19.4 **Confidentiality.**

Subcontractor acknowledges and agrees that it will execute any confidentiality or nondisclosure agreements required by the Owner Contract, which will be attached to the **Project Work Order** and **Exhibit G Contractor's Mutual Confidentiality and Non-Disclosure**

Agreement. Subcontractor further acknowledges and agrees that Contractor may disclose certain information to Subcontractor for purposes of the Work that Contractor and/or Owner considers to be confidential or proprietary or to constitute trade or business secrets (collectively “Confidential Information”). In the absence of more stringent requirements contained in the Owner Contract, when Contractor and/or Owner discloses any information designated as Confidential Information to Subcontractor, Subcontractor agrees that:

- 19.4.1 the Confidential Information shall be used solely for the purpose of performance under the Subcontract and disclosed only to those of Subcontractor’s employees who have a need to know the information for that purpose;
- 19.4.2 it shall not disclose Confidential Information to any third party without Contractor’s prior written consent;
- 19.4.3 it will take precautions to prevent the disclosure of the Confidential Information that are no less stringent than those employed to preserve the secrecy of its own confidential business information or trade secrets, and in no event less than reasonable precautions; and,
- 19.4.4 upon completion of the Work it will return all documents containing Confidential Information to the Contractor and/or Owner without retaining any copies thereof.

Unless a longer period is established by the Contract Documents, the provisions of this Section 19.4 shall remain in force for a period of five (5) years after Contractor’s final completion of its work at the Project. Subcontractor agrees that in the event of its breach or threatened breach of its obligations under this Section 19.4, Contractor shall be entitled to equitable relief in order to restrain any continued or threatened breach.

19.5 Contractor’s Remedies Are Not Exclusive.

The remedies provided to Contractor in the Subcontract are cumulative and not exclusive and additional to any other remedies available to Contractor under Applicable Law.

19.6 Damages Limitation.

In no event shall any of the Indemnified Parties be liable to Subcontractor or any of its Sub-subcontractors, whether based on delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, for any consequential, special, incidental, indirect, exemplary, multiple or punitive damages or damages arising from or in connection with loss of use or loss of revenue or profit, actual or anticipated or otherwise, and Subcontractor hereby releases each of the Indemnified Parties from any such liability. Subcontractor shall obtain similar releases from each of its Sub-subcontractors.

19.7 Title to the Work.

Title to the Work, or portions thereof, shall pass to Contractor upon the occurrence of the earliest of the following events, as applicable: a) when such Work or portion is delivered to the Contractor or the Project Site pursuant to the Subcontract; b) when Subcontractor has been paid any sum to which it may become entitled in respect to such Work or portion; c) when such Work or portion is identifiable to the Subcontract; or d) when the Certificate of Final Completion for all Work is issued by Contractor on behalf of the Owner and/or Architect. All equipment, materials, supplies and other items to which Contractor has title shall not be removed from the Project site without Contractor’s prior written consent.

19.8 Reformation of Unenforceable Provisions.

Subcontractor acknowledges that Contractor conducts business on a nationwide basis and that it is Contractor’s intent that the requirements of the Subcontract comply with and are fully enforceable under the laws of all jurisdictions where it conducts business. The parties agree that if any provision of the Subcontract is determined by a court to be unenforceable in whole or in part under Applicable Law, that determination shall not affect the validity and enforceability of the remainder of the Subcontract and that only the provision (or part thereof) in question shall be deemed unenforceable. Accordingly, in the event that any one or more of the provisions of the Subcontract shall be found to be contrary to public policy and unenforceable, the remaining provisions of this Subcontract shall remain in full force and effect, and such term or provision shall be deemed stricken to the extent and in the jurisdictions necessary for compliance with Applicable Law.

19.9 Survival.

The applicable provisions of Articles 12, 13, 14, 15, 16, 17, 18 and 19 and any other provision of the Subcontract that either: (1) provides for limitation of or protection against liabilities between Contractor and Subcontractor; or (2) expressly or by implication comes into or continues in force and effect after Subcontractor’s completion of the Work, shall survive termination of the Subcontract and Subcontractor’s completion of the Work.

19.10 Notices.

All notices required or permitted pursuant to this Subcontract shall be in writing and sent to the parties at the addresses set forth on the Subcontract Agreement. Notice shall be deemed delivered only upon receipt. Notice may be sent via facsimile, so long as the party sending the facsimile uses a machine that produces a printed confirmation of delivery, and retains the printed confirmation evidencing that the transmission was successfully completed as proof of delivery. Upon consent of Contractor, notices may also be sent via electronic transmission (e-mail).

19.11 Subcontract Document.

The Subcontract shall be construed without regard to any presumption or other rule requiring construction or interpretation against the party who caused it to have been drafted. The Subcontract may be executed in counterparts, each of which will be considered an original.

19.12 **Additional Documents to Subcontract.**

The Subcontract, including the Master Subcontract Agreement, Project Work Order and all attached Exhibits, represent the entire integrated agreement between the parties with respect to the Project and supersedes all prior negotiations, proposals, correspondence, representations or agreements, whether written or oral, express or implied. The Subcontract may only be amended or modified in a Change Order or other writing signed by both Contractor and Subcontractor. The failure of Contractor to enforce at any time or for any period of time any one or more of the provisions of the Subcontract shall not be construed as a waiver of any such provision or provisions.

19.13 **Frivolous Claims.**

In the event the Subcontractor asserts any frivolous claim against Contractor (or submits a Subcontractor adjustment request that has no substantial merit or that is based in whole or in part upon materially inaccurate assertions), Contractor shall be entitled to collect from Subcontractor by offset or otherwise any and all costs and expenses (including but not limited to reasonable attorney's fees) incurred by Contractor in investigating, responding to, defending against and resolving such claim or request.

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