

# Finance Guide V: Insurance Requirement for a Sample Contract

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National Association of Elevator Contractors



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# About this Study Guide

This guide is intended to supplement your individualized Skillsoft learning by providing materials and examples specific to the vertical transport industry.

The learning objective for this study guide is for the student to be able to review agreement documents and determine the types of insurance that are required and the limits of liability for each occurrence and aggregate.

Information included in this study guide is intended for educational purposes only. Check with your company for specific guidelines.

# Contract Agreement

This section contains a typical master contract agreement between general contractor and elevator subcontractor. See example of insurance requirements in Article XIII.

A job or project agreement is different than a master subcontract and may be in addition to a master contract agreement. It will be for a particular job. The project agreement will outline specific requirements for that job. For example, a bid bond and performance bond may be required. See blank examples of each in Finance Study Guide VI "Bid Bond and Consent of Surety" section.

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# MASTER SUBCONTRACT GENERAL CONDITIONS AGREEMENT

THIS MASTER SUBCONTRACT GENERAL CONDITIONS AGREEMENT (the "Master Agreement") is dated 6/13/2014, by \_\_\_\_\_ and between \_\_\_\_\_ with an address of \_\_\_\_\_, (hereinafter the "Construction Manager") and \_\_\_\_\_, with an address of \_\_\_\_\_, (hereinafter the "Subcontractor"). (Construction Manager and Subcontractor may be referred to individually as a "party" or collectively as the "parties"). References to the word "Subcontract" in this Master Agreement shall refer to this Master Agreement as well as the applicable Project Agreement.

The Construction Manager and Subcontractor agree as follows:

## ARTICLE IV

### A. GENERAL PROVISIONS

The Subcontract shall be deemed to have been made in New Jersey and shall be construed under the laws of the State of New Jersey.

### B. CONSTRUCTION MANAGER'S REPRESENTATIVE

Construction Manager's agent for purposes of this Subcontract is the designated project manager, to whom the Subcontractor shall address all correspondence.

### C. WORKMANSHIP AND QUALIFICATION

The Subcontractor shall perform its services under this Subcontract in a skillful and competent manner in accordance with the highest standards of the construction industry and in accordance with all applicable codes, rules, regulations and laws. The Subcontractor shall be responsible to the Construction Manager for errors or omissions in construction and failure to perform this Subcontract. The Subcontractor represents and warrants that it is fully qualified to perform the Work and is properly licensed; has sufficient manpower; supervision; equipment; and is financed to perform the Work. Furthermore, the Subcontractor fully understands the terms and conditions under which the Subcontract is to be performed, has acquainted itself with the Project site and its conditions and has priced and will provide services to complete the Work in a timely manner within the stipulated time for completion.

### D. NOTICE

Written notice shall be sufficiently served when delivered or sent by Regular First Class Mail, United States Certified Mail, or such other overnight mail carrier to the Subcontractor at its address, as stated in the Subcontract, and to the Construction Manager, attention of the Project Manager, at the Construction Manager's address as stated in the Subcontract.

## E. TIME OF ESSENCE

The time limits stated in the Subcontract are of the essence. The Subcontractor shall cooperate with the Construction Manager and execute the Work in a timely fashion to avoid delaying or interfering with the progress of the entire Project. The Construction Manager has the right to require the Subcontractor, without cost or liability to the Construction Manager, to schedule Work to minimize delay or interference which could increase the cost of the Work of other subcontractors. Subcontractor agrees to keep the Construction Manager thoroughly informed with the overall progress of the Project; to commence and prosecute the Work in prompt and diligent manner whenever the Subcontractor's Work becomes available, or such time as the Construction Manager may direct. The Subcontractor shall not delay or otherwise interfere or hinder the work or the progress of the Construction Manager or any other subcontractor.

It is acknowledged by the Subcontractor that the Construction Manager may prepare or distribute Project schedules which may be modified in its sole, exclusive and absolute discretion from time to time to account for, without limitation, job conditions, changes required in the plans and specifications, the rate of performance attributable to other subcontractors, suppliers, the Owner, or other prime contractors or the Construction Manager, for acts of God or other events which may delay the progress of the Work. The Construction Manager makes no representation that the Subcontractor will be able to commence, prosecute, sequence or complete the Work in accordance with the Project schedule. Subcontractor agrees and will perform the Work in accordance with the revised Project schedules, commencement dates, completion dates, sequences and durations determined at the sole, exclusive and absolute discretion of the Construction Manager. It is the Subcontractor's obligation to complete the Work within the time, duration and sequence scheduled from time to time during the Project by Construction Manager and if the start or completion date or the durations of time for completion of the Work or any portions thereof is changed, condensed or increased, such modifications to the progress schedule by the Construction Manager shall not be the basis of any claim by the Subcontractor for delay or damages, acceleration, constructive acceleration, interferences or any other claim for an increase in the Contract Sum, or excuse the Subcontractor's performance as required herein.

The Subcontractor hereby agrees that failure to maintain the Project schedule may result in additional costs to the Construction Manager sustained by reason of such delay, directly or indirectly attributed to, or caused by the Subcontractor. The Subcontractor shall reimburse the Construction Manager for any damages assessed or asserted by the Owner and the Construction Manager as the result of delays caused by or attributable to the Subcontractor. These actual damages along with the Construction Manager's acceleration costs, extended job overhead, and all other direct and indirect costs including reasonable attorney fees, shall be promptly reimbursed by the Subcontractor or offset in the sole discretion of the Construction Manager, against monies payable or retainage due to the Subcontractor.

No extension of time will be granted to the Subcontractor for delays in the performance of the Work unless the Construction Manager has received an extension of time and only to the extent that the time the Construction Manager receives from the Owner. Regardless of the cause of the delay, the Subcontractor shall not be entitled to compensation for delay.

Furthermore, the Subcontractor shall not be entitled to any extension of time for delay unless written notice to the Construction Manager has been submitted in writing within ten (10) days of such delay, and then upon the written approval of the Owner, Architect and Construction Manager.

## F. CONFIDENTIALITY

The Subcontractor shall not divulge information concerning this Project to anyone without the Construction Manager's prior written authorization. In addition, the Subcontractor, its agents and suppliers shall be prohibited from disclosing the name of the Construction Manager, the Owner and/or the name of the Project to any third party. Similarly, the Subcontractor shall ensure that the Subcontractor's suppliers, employees and agents do not divulge any information concerning the Project to anyone. All of the Subcontractor's written contracts with the foregoing shall contain a similar confidentiality clause. The Subcontractor shall be responsible for all non-compliance. Subcontractor shall obtain similar agreements from persons, firms and corporations employed by it. This requirement shall survive the expiration of the Subcontract.

## G. WORD USAGE

Words describing materials or work, which have a well-known technical or trade meaning, unless otherwise specifying alternates or substitutions, must be approved in writing as defined in the Subcontract and shall be construed in accordance with such well-known meaning as recognized by architects, engineers and trades.

## H. CONFLICTS

The Subcontract and each of the Contract Documents are complementary and they shall be interpreted so that what is called for by one shall be as binding as if called for by all. Should the Subcontractor observe any conflicts within the Contract Documents, it shall bring them to the Construction Manager's attention for decision and revision as soon as possible after initially observed.

## I. ASSIGNMENTS

(1) The Construction Manager and the Subcontractor each binds himself/itself, his/its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Subcontract. The Subcontractor shall not assign the Subcontract or sublet it as a whole without the prior written consent of the Construction Manager, nor shall the Subcontractor assign any monies due to or to become due to him hereunder, without the previous written consent of the Construction Manager.

(2) The assignment by Subcontractor of this Subcontract or any interest therein, or of any money due or to become due by reason of the terms hereof without the written consent of the Construction Manager shall be void. Any assignment, if consented to, will be deemed subject to labor preferences and liabilities imposed upon the Construction Manager for unpaid obligations of Subcontractor, or for any other liabilities for which Subcontractor might be held responsible.

## J. OWNERSHIP

All drawings, specifications and copies thereof furnished by the Construction Manager are and shall remain the Construction Manager's property. They shall not be used on any other Project, and are to be returned on request, at the completion of the Work.

## K. BANKRUPTCY

If the Subcontractor shall be adjudged bankrupt or insolvent, if it makes a general assignment for the benefit of its creditors; if a trustee or receiver should be appointed on account of its insolvency or for any of this property, if it files a petition to take advantage of any debtors' act or to reorganize under bankruptcy or similar laws; if it persistently or repeatedly refuses or fails (except in cases for which extension of time is provided) to supply properly skilled workers or proper materials or equipment; if it should fail to make prompt payment to supplier or for labor, materials or equipment; if it should persistently disregard statutes, laws, ordinances, codes, rules or regulations; or if it should otherwise be guilty of substantial violation of any term, condition or provision of this Agreement, then the Construction Manager, without prejudice to any other right or remedy and after giving the Subcontractor three (3) days written notice, may terminate this Subcontract, take possession of the Project and all materials, equipment and all else thereon, and finish the Work by whatever method the Construction Manager deems expedient. In the event any of the aforementioned events occur, the Subcontractor shall not be entitled to receive further payment until the Work is finished; if the unpaid balance of the Contract Sum exceeds the Construction Manager's expenses of finishing the Work, including compensation for additional engineering, managerial, administrative and legal services, such excess shall be paid to the Subcontractor; if such expenses exceed such unpaid balance, the Subcontractor shall promptly pay the difference to the Construction Manager upon its request.

## L. RESPONSIBILITY OF SUBCONTRACTOR

(1) The Subcontractor shall be responsible to the Construction Manager for the acts and omissions of all its employees and all suppliers, their agents and employees, and all other persons performing any of the Work under this Contract. The Subcontractor shall satisfy such supplier claims within ten (10) days of their filing and to defend and indemnify the Construction Manager and its sureties from such claims and from any and all losses, damages, liability, costs and expenses, including legal fees and disbursements that may incur in connection therewith. To the extent permitted by law, the Subcontractor shall not allow or cause any Construction Lien or Notice of Unpaid Balance and Right to File Lien (hereinafter "NUB") to remain of record as a claim against any property interest of the Owner; nor shall the Subcontractor suffer or permit any such Construction Lien or NUB to be so filed because of any claim or demand against, Subcontractor or any of its supplier or suppliers.



(2) In the event that any suppliers and/or material suppliers or any other party with whom the Subcontractor has entered into a relationship, which affords to said party Construction Lien rights, files a Construction Lien or a NUB arising out of or in connection with the work, labor and/or material, which is included within this Subcontract, the Subcontractor shall immediately cause same to be discharged, satisfied and/or bonded and in default thereof, the Construction Manager shall have the right to bond any Construction Lien, and/or NUB or otherwise discharge same and to retain out of any payment then due or thereafter to become due, an amount sufficient to completely indemnify itself and the Owner against such Construction Lien or NUB, with interest together with expense incident to discharging such Construction Lien or NUB and the defense of any such suit to enforce such Construction Lien or NUB, including any premiums charged for any bond and all attorneys' fees and disbursements incurred. Should there prove to be any claim and party with whom the Subcontractor has entered into a relationship to perform any part of the Scope of Work after all payments have been made under this Subcontract, the Subcontractor shall refund to the Construction Manager all monies that the Construction Manager may be compelled to pay to discharge and/or in defense of the Construction Lien or NUB. Any such Construction Lien or NUB until satisfied or withdrawn shall preclude any and all claim or demand for payment whatsoever by the Subcontractor. The Subcontractor agrees to indemnify, protect and hold harmless the Construction Manager and the Owner from and against any and all claims, actions, fines, penalties or judgments rendered thereon, or any loss, damages, liability, costs and expenses including legal fees and disbursements which the Construction Manager and/or the Owner may sustain/incur as a consequence of the Subcontractor's failure to comply with the terms of this Article.

(3) The failure of Subcontractor after ten (10) days written demand by the Construction Manager to satisfy, discharge and/or bond a Construction Lien or NUB filed by a supplier of the Subcontractor shall constitute a material breach of this Subcontract.

(4) The Subcontractor shall within ten (10) days of the date of this Subcontract, provide the Owner with an accurate list of the names and addresses of each supplier or other party with whom it shall Subcontract and who may have a right to file a Construction Lien or NUB pursuant to the provisions of law. The Subcontractor covenants and agrees that it shall furnish the name and address of such other supplier or other parties with whom it enters into an agreement hereafter, who may have a right to file a Construction Lien and/or NUB pursuant to the provisions of law.

(5) If the Subcontractor files a Construction Lien or NUB, which is ultimately judged to be invalid or overstates the amount properly subject to a Construction Lien or NUB, then the Subcontractor shall in addition to all liabilities resulting from the provisions of the law, be liable to the Construction Manager for all bonds, deposits or costs of removal of the invalid Construction Lien or NUB and/or the overstated portion of such Construction Lien or NUB (including without limitation, all attorneys' fees and expenses), and the Subcontractor shall indemnify and hold harmless the Owner from all resulting losses and expenses.

## M. EMERGENCY

In any emergency affecting the safety of persons or property, the Subcontractor shall act at its discretion to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Subcontractor on account of emergency work shall be determined as provided herein for changes in the Work.

## N. REJECTION OF WORK

(1) The Construction Manager will have authority to reject Work which does not conform to the Subcontract. The Subcontractor shall promptly correct all Work rejected by the Construction Manager as defective or as failing to conform to the Subcontract whether observed before or after completion. The Subcontractor shall bear all costs of correcting such rejected Work. Should a dispute arise as to the Construction Manager's decision to reject the Work, the Subcontractor shall proceed immediately in accordance with Construction Manager's instructions.

(2) Payments otherwise due may be withheld by the Construction Manager on account of defective work not remedied, failure of the Subcontractor to make payments properly to its supplier or for material or labor, a reasonable doubt that the Scope of Work can be completed for the balance then unpaid or for any other claim by the Construction Manager against Subcontractor. If the aforementioned causes for withholding payments are not remedied or begun to be remedied and there is likelihood that the remedy will not be completed within a reasonable time, then after two (2) days written notice from the Construction Manager, the Construction Manager may remedy the cause of nonpayment at the Subcontractor's expense. The Construction Manager may offset against any sums due Subcontractor under this Subcontract or any other agreement between Subcontractor and the Construction Manager the amount of any un-liquidated obligations of the Subcontractor incurred by the Construction Manager in the performance of this Contract.

(3) Written notice of any claim by the Subcontractor for damages by reason of any act or omission of the Construction Manager shall be presented to the Construction Manager within two (2) days after the initiation of such act or omission. Failure to make written notice of claim within the time and in the manner herein provided shall constitute a waiver thereof and no recovery therefore can be had.

## ARTICLE V DEFINITIONS

### A. COMPLETION

The term "Completion" means the completion of all of the Work called for under the Subcontract, including but not limited to, satisfactory operation of all equipment, correction of all punch list items, settlement of all claims, if any, release of records of all liens, removal of all rubbish, tools, scaffolding and surplus materials and equipment from the job site, delivery of all guarantees, equipment operation and maintenance manuals, as-built drawings, all required approvals, certificates and acceptances by all governmental agencies and authorities, or any other agency or authority having jurisdiction including, but not limited to, insurance underwriters and bonding companies.

### B. CONTRACT DOCUMENTS

(1) The "Contract Documents" consist of this Subcontract, each particular Project Agreement, the Prime Contract (as defined herein) all Exhibits attached hereto and enumerated herein, Changes and Addenda to this Subcontract, and each particular Project Agreement that supersedes all prior negotiations, representations or agreements, either written or oral; Conditions of the Subcontract, if any, the contract between the Owner and the Construction Manager, Plans, Specifications, Changes and Addenda to the Plans and Specifications, Change Orders made to this Subcontract and all such Contract Documents shall be attached as Exhibit "A" to the particular Project Agreement.. In the event of a conflict between this Subcontract, the particular Project Agreement, or any of the other Contract Documents, the particular Project Agreement shall take precedence and control to the extent of such conflict. The Subcontractor, by signing this Subcontract, acknowledges that all of the above-referenced Contract Documents are part of this Subcontract.

(2) With respect to the Work to be performed and furnished by the Subcontractor hereunder, the Subcontractor agrees to be bound to the Construction Manager by each and all of the terms and provisions of the General Contract and the other Contract Documents to the same extent to which the Construction Manager is bound to the Owner, and to assume toward the Construction Manager all of the duties, obligations, and responsibilities that the Construction Manager by those Contract Documents assumes toward the Owner, and the Subcontractor agrees further that the Construction Manager shall have the same rights and remedies as against the Subcontractor as the Owner under the terms and provisions of the General Contract and the other Contract Documents has against the Construction Manager with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. The terms and provisions of this Subcontract with respect to the Work to be performed and furnished by the Subcontractor hereunder are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of the General Contract and the other Contract Documents.

### C. SUBCONTRACTOR

The term "Subcontractor" means the person, firm or corporation responsible for the execution of the work contracted for herein.

#### D. CONTRACT SUM

The term "Contract Sum" means the Contract Sum shown in the Subcontract, including allowances, as revised by approved Contract Modification Orders.

#### E. PROJECT

The "Project" is the total construction of which the Work performed under the particular Project Agreement is a part.

#### F. SUPPLIER

A "Supplier" is a person or organization who has a direct contract with the Subcontractor to perform any of such Subcontractor's work.

#### G. WORK

(1) The term "Work" unless otherwise specified, indicates everything necessary to complete the entire performance of this Subcontract, as more fully described in the particular Project Agreement. As set forth above, the Subcontractor agrees to be bound to the Construction Manager, and to assume toward the Construction Manager, all of the obligations and responsibilities that the Construction Manager has assumed toward the Owner under the contract between the Owner and the Construction Manager (hereinafter the "Prime Contract"). These assumed obligations and responsibilities shall include, but not be limited to, all work necessary and/or reasonably inferable to complete Subcontractor's Scope of Work.

(2) Subcontractor's Scope of Work shall include, but not be limited to, all work set forth or implied by that Scope of Work set forth in the particular Project Agreement,

### ARTICLE VI

#### ADDITIONAL OR DELETED WORK

#### A MODIFICATION ORDERS

The Construction Manager may at any time order changes in the Work; such Work to be described by Change Orders presented to the Subcontractor. Increases or decreases in the Contract Sum shall be determined, where possible, as follows: (1) a lump sum; (2) unit costs; or (3) a predetermined cost plus 10% markup as agreed to by the Construction Manager and Subcontractor prior to the execution of the Work (as such term is defined in the current edition of the AIA Standard Form of Agreement Between Owner and Subcontract where the basis of payments is the cost of the work plus a fee; such work is not to be performed with overtime without the prior written consent of the Construction Manager).

Without invalidating this Subcontract, the Construction Manager may add to or reduce the Work to be performed hereunder. If the provisions of the Subcontract or the Owner require the Construction Manager to file, within a specified time period, notices, claims or other documents with the Owner in order to receive compensation for extra or change work, the Subcontractor shall comply with these requirements so as to allow Construction Manager to timely file them with Owner. No extra work or changes from the plans and specifications for the project will be recognized or paid, unless agreed to in writing before the extra work is started or the changes are made. Subcontractor agrees that it shall make no claim for extra or additional compensation on account of any such Work unless same has been done pursuant to a written order, signed by the designated representative of the Construction Manager as having the authority to order such Work, as provided herein.

If such additions, alterations, or deviations shall result in the omission of any of the Subcontractor's Work, then the fair and reasonable value of the omitted Work shall be deducted from the particular Contract Sum. Unless otherwise agreed, if the Subcontractor performs extra work other than overtime work ordered by the Construction Manager, it shall receive the predetermined cost plus 10% markup as agreed to by the Construction Manager and Subcontractor prior to the execution of the Work. Notwithstanding the foregoing, at the sole option of the Construction Manager, the Subcontractor shall receive either: (i) unit prices as specified in the Subcontract Documents; or (ii) payment shall be made on a time and material basis. In the event the Prime Contract has a more restrictive method to calculate the amount paid for change work, the Subcontractor shall be bound by the terms of the Prime Contract. In no event shall Subcontractor be entitled to recover any sum greater than the Construction Manager is permitted to recover for the payment of change order work under the terms of the Prime Contract.

In the event that the Construction Manager directs, instructs, or orders the Subcontractor to perform any item of Work which the Subcontractor claims involves extra or additional Work, the Subcontractor within three (3) days after receipt of such direction, instruction or order and before proceeding with the item of Work, submit in writing to Construction Manager its claim that the Work constitutes extra work, giving in detail the basis of its contention and providing a breakdown showing the additional cost of each item of labor, material, equipment and services to be provided. All such change orders must be signed by the Construction Manager's designated representative having the authority to order such work. Subcontractor shall then proceed with this work. The Subcontractor's failure to provide Construction Manager with its written notice of claim within the three (3) days specified, and in the manner as provided herein, shall constitute a waiver of its claim that the work constituted an extra and additional work under this Subcontract and the Subcontractor shall be barred from any recovery on any account of the performance of the particular work. The failure of the Subcontractor to perform this work, immediately after giving written notice of its claim, or on the fourth day subsequent to being directed to perform the work, whichever is less, shall constitute a material breach of this Subcontract, regardless of the legitimacy of the Subcontractor's contentions, as it is specifically understood that the progress of the work may not be delayed by reason of any dispute between the parties.

With respect to any item of work claimed by the Subcontractor to be extra and additional work, including claims arising from alleged omissions, errors, or discrepancies in the plans and specifications prepared by the Owner, upon receipt of the Subcontractor's written notice of claim, the Construction Manager may submit the same to the Architect or Owner's designated representative for its determination as to whether or not the claim constitutes extra work under the Prime Contract and, if so, determine the amount to be paid for such extra work. Any Subcontractor notice of claim must be submitted under the notice requirements to the Construction Manager in a timely fashion so that Construction Manager can review in

its sole discretion, submit such claim to the Owner. The Subcontractor agrees to be bound by the determination of the Architect and/or the Owner's designated representative and will accept such payment, if any, as specified by the Architect and paid by the Owner. Should the Architect determine that the work is not an extra and awards no payment for such, or awards partial payment for such claim, Subcontractor agrees to accept such determination and payment as payment in full for the extra work and shall be bound by that determination as provided by this Subcontract.

Should the Construction Manager receive a bulletin, supplement, revision or other change to the Contract Documents together with a request by the Construction Manager to identify any extra or additional work and provide a price to perform said work, the Subcontractor shall submit its proposal to the Construction Manager within ten (10) days of receipt in a format acceptable to the Construction Manager, unless the Construction Manager, in its sole discretion and in the best interest of the project, requires a shorter time period. It is agreed that if the Subcontractor does not submit such proposal to Construction Manager within ten (10) days, then the Construction Manager may estimate the value of the work to be performed by the Subcontractor or at its sole, exclusive and absolute discretion, may submit its own request for a change order without any additional sums for Subcontractor's performance of the extra or additional work. Subcontractor shall have waived any right to recover any change order and payment for said extras and additional work if it has failed to submit its proposal to the Construction Manager within the time period specified herein.

Should overtime work be ordered by Architect or Owner, due to no fault of the Subcontractor, payment shall be made to the Subcontractor only for the actual premium portion of labor cost of said overtime plus taxes and insurance applicable only to the actual premium portion of such labor cost. Subcontractor shall not be entitled to any profit or overhead for overtime work. In the event that the Construction Manager and the Subcontractor agree that the Subcontractor has been instructed to perform extra work for which a change order should be issued and the Construction Manager and Subcontractor do not agree upon the adjustment to be made to the Contract Sum for said work, the Construction Manager may issue a directive for the performance or deletion of said work and the value of the change order will be decided within a reasonable period of time thereafter, which shall include time for the review and the decision of the Construction Manager, Architect, or Owner. Upon receipt of the directive, Subcontractor shall promptly proceed with its performance or deletion of the work set forth in the directive.

In the event that the Construction Manager and Subcontractor are in dispute as to whether the work constitutes extra work for which a change order should be issued, the Subcontractor shall precede with the performance or deletion of said work as set forth by the Construction Manager. In no event may Subcontractor stop work or suspend work due to the existence of the dispute or a claim.

## ARTICLE VII SCHEDULE

A. Recognizing that time is of the essence in this Subcontract, the Subcontractor agrees:

- (1) To supply materials, labor, and payment as necessary to commence the Work when directed by the Construction Manager;
- (2) To diligently pursue the completion of the Subcontractor's Scope of Work and coordinate its work with any and all other work being performed at the Project so as to prevent any delay in Subcontractor's Scope of Work or work by others at the Project;
- (3) To acknowledge 1) the Construction Manager's complete control of the premises on which work is to be performed and 2) the Construction Manager's right to decide the time or order in which all work at the Project shall be performed;
- (4) To perform its Scope of Work in accordance with the Construction Manager's progress schedule, which schedule may be modified as Project work progresses;
- (5) To work overtime, Saturdays, and Sundays at the direction of the Construction Manager without additional cost to the Construction Manager if, in the judgment of the Construction Manager, such overtime and Saturday and Sunday work is necessary due to delays or the likelihood of delays caused by Subcontractor;
- (6) To acknowledge that if the Subcontractor delays the progress of the work so as to cause any damage to property for which the Construction Manager shall suffer or become liable, the Subcontractor shall compensate the Construction Manager for any such damages;
- (7) To acknowledge that any assent or permission of the Construction Manager to the delayed finishing of the work shall not be construed as a waiver of the Construction Manager's rights to seek damages caused by such delay;
- (8) To acknowledge that in the event the work of the Subcontractor is damaged by any person or entity on the site other than the Construction Manager, the Subcontractor shall immediately replace or repair the damaged work so that it is in "like new" condition and the Subcontractor shall look only to that person or entity that caused the damage for restitution;

(g) To acknowledge that the Construction Manager shall not be liable to the Subcontractor for any delays to the Subcontractor's work resulting from acts, negligence, or default of the Owner, the Construction Manager, or other Subcontractor(s), their employees or representatives, or by reason of fire or other casualty, weather, riots, strikes, acts of God, force majeure, or any cause beyond the Construction Manager's control.

B. If the Subcontractor fails to complete the Work as scheduled in Article II above, or as extended in writing by the Construction Manager, then the Subcontractor shall pay to the Construction Manager, as liquidated damages, an amount equal to the liquidated damages that Construction Manager owes to the Owner as provided in the Prime Contract. Since the exact amounts of the Construction Manager's losses due to the Subcontractor's delay in performance are not readily ascertainable, the amounts herein constitute agreed upon damages and not a penalty.

C. Should the Subcontractor be delayed in the commencement, prosecution or completion of the Work because of damage caused by fire or other casualty, or extraordinary conditions arising out of war or government regulations, or other cause beyond the Subcontractor's control and not due to any fault, neglect, act or omission on its part, then the Subcontractor shall be entitled as its sole remedy for such delay to an extension of time, but only for a period equivalent to the time lost by reason of any and all of the aforesaid causes, as determined by the Construction Manager. The Subcontractor shall not be entitled to any such extension of time, however, unless a claim is presented in writing to the Construction Manager within seven (7) calendar days of the commencement of such claimed delay. Such extension or extensions of time shall release and discharge the Construction Manager of and from any and all claims of whatever character by the Subcontractor on account of the aforesaid or any other causes of delay.

## **ARTICLE VIII**

### **A. RESPONSIBILITIES OF SUBCONTRACTOR**

Responsibility of Subcontractor with regard to other Subcontractors performing Work on the Project:

(1) The Subcontractor shall not interfere with other firms', Subcontractors', or supplier' introduction and storage of their material and the execution of their work, and shall properly coordinate the Subcontractor's work with the work of other firms, Subcontractors or supplier.



## (2) COOPERATION

The Subcontractor shall cooperate with other firms, subcontractors, or suppliers on the Work and with the Construction Manager so that all portions of the Work may be completed in the least possible time within normal working hours. The Subcontractor shall furnish to the Construction Manager, immediately subsequent to execution of this Subcontract, detail and erection drawings giving full information regarding the fabrication and assembly of the Subcontractor's work wherever the Subcontractor's work is to be fitted into the work of others.

## (3) INSPECTION OF OTHERS' WORK

If the proper execution of any part of the Subcontractor's Work depends on the results of any other separate Subcontractor, the Subcontractor shall inspect and promptly report to the Construction Manager any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Subcontractor to so inspect and report shall constitute an acceptance of the other Subcontractor's work as fit and proper to receive the Subcontractor's work, except as to defects, which may develop in the other separate Subcontractor's work after the execution of the Subcontractor's Work.

## (4) PROTECTION OF WORK

Subcontractor shall take every reasonable precaution to protect its Work or materials from loss or damage. If Subcontractor or its employees are responsible for any loss or damage to the Work or materials of the Owner, the Owner's separate Subcontractors, or any other Subcontractor, it shall be charged with same, and any monies necessary to replace such loss or damage shall be deducted from monies due to the Subcontractor.

## (5) CUTTING AND PATCHING

The Subcontractor shall do all cutting and fitting necessary to complete its Work in a neat and workmanlike manner so as to minimize the cost of patching by other Subcontractors of their Work. The Subcontractor shall patch all of its Work by not interfering with other Subcontractors in the progress of their Work. The Subcontractor shall not endanger any work of any other subcontractors or any portion of the Project by cutting, excavating or otherwise altering any work. Any costs caused by such work, which is defective or ill-timed, shall be borne by the party responsible therefore.

## B. LIST OF SUPPLIER, EMPLOYEES, AND AGENTS

No later than five (5) days following the execution of the particular Project Agreement, the Subcontractor shall provide the Construction Manager with a written list of each supplier, employees, and agents who the Subcontractor intends to involve in the Work and with Certificates of Insurance for each. The list shall be updated in writing as any change occurs.

### C. STORAGE

The Subcontractor shall use only such areas as are designated by the Construction Manager for storage.

### D. CLEANING

The Subcontractor, at all times, shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of its Work, it shall remove all of its waste materials and rubbish from and about the Project as well as all of its tools, surplus and demolished materials, construction equipment and machinery, which shall be the property of the Subcontractor, and leave the Work area "broom clean" or its equivalent. If the Subcontractor fails to clean up, the Construction Manager may do so and the cost thereof plus 15% overhead and profit shall be charged to and paid by the Subcontractor.

### E. COMMUNICATIONS

All communications of the Subcontractor concerning the Work or the Project shall be made through the Construction Manager's designated project manager.

### F. DISCIPLINE

The Subcontractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work, any unfit person or anyone not skilled in the task assigned to it. The Subcontractor agrees to remove promptly any employee designated by the Construction Manager as unsatisfactory.

### G. MATERIALS AND WORKMANSHIP

The Subcontractor agrees and warrants that all materials furnished under this Subcontract will be new unless agreed to in writing by the Construction Manager, and that all Work will be free from faults and defects and in conformance with the Subcontract. All work not so conforming to these standards shall be considered to be defective and shall be removed from the job and promptly replaced at the Subcontractor's expense. If required by the Construction Manager, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of the materials. The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract.

### H. SHOP DRAWINGS AND SAMPLES

(1) Shop drawings and samples shall be properly identified. At the time of submission, the Subcontractor shall inform the Construction Manager, in writing, of any deviation in the shop drawings or samples from the requirements of the Subcontract. Upon submission, the Construction Manager will review and approve shop drawings and samples within a reasonable time. Should corrections be required by the Construction Manager, the Subcontractor shall resubmit corrected copies of shop drawings or new samples until approved or "approved as noted." The Construction Manager's approval of shop drawings or samples shall not relieve the Subcontractor of responsibility for any deviation from the requirements of the Subcontract unless agreed by Construction Manager in writing. Construction Manager's approval shall not relieve the

Subcontractor from responsibility for errors or omissions in the shop drawings or samples. No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been approved by the Construction Manager and all such portions of the Work shall be in accordance with such approved shop drawings and samples.

(2) The Subcontractor shall carefully examine the Contract Documents to identify and approve all material to be submitted, such as, shop drawings, data, schedules, samples, etc. Such submittals shall be made at the Subcontractor's expense and in such form as required by the Contract Documents in sufficient time to prevent any delay in the delivery and installation of such materials. The Subcontractor shall notify the Construction Manager in writing of the lead times and shipping times of all materials.

#### I. AS-BUILT DRAWINGS

Upon completion of the Work or any portion thereof, the Subcontractor shall submit, with reasonable promptness, drawings of such Work or portion thereof, "As-Built", as required by the Construction Manager. The Subcontractor shall keep "As- Built" drawings up-to-date as the Work progresses and shall not wait until the end of the job to prepare.

#### J. SUBCONTRACTOR'S REPRESENTATIVE

(1) The Subcontractor shall provide the services of a competent representative, as approved by the Construction Manager, from the commencement of the construction to final completion and acceptance of the Work to act as the Subcontractor's liaison with the Construction Manager; the Subcontractor or such representative shall be available for communications from the Construction Manager at all times during the progress of the Work.

(2) Such representative shall represent the Subcontractor in its absence from the Work, and all directions, instructions or notices given to the representative by the Construction Manager shall be as binding as if given to the Subcontractor.

#### K. ROYALTIES AND PATENTS

The Subcontractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patents and shall defend and hold the Construction Manager harmless from loss on account thereof, except that the Construction Manager shall be responsible for all such loss when a particular process or product is specified by it unless the Subcontractor shall have information that a particular process or product infringes a patent, in which event, the Subcontractor shall be responsible for loss on account thereof unless the Subcontractor promptly provides such information to the Construction Manager.

## L. PERMITS, FEES, TAXES AND NOTICES

(1) The Subcontractor shall secure and pay for all permits, governmental fees, licenses and/or certificates necessary for the property execution, completion, and occupancy of the Work.

(2) The Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority or utility company bearing on the performance of the Work. If the Subcontractor performs any work contrary to such laws, ordinances, rules and regulations, it shall assume full responsibility therefore, and shall bear all costs attributable thereto or resulting therefrom. The Subcontractor shall be solely responsible for the expense of conforming its Work to such laws, ordinances, rules and regulations.

(3) Subcontractor will pay all social security and other taxes imposed upon it as an employer in connection with the performance of this Subcontract, and will furnish evidence, when required by the Construction Manager, showing that all such payments required to be made have been paid. Subcontractor shall pay all local, state, and federal taxes in connection with its Work.

## M. FIELD ENGINEERING AND CONSTRUCTION MANAGER'S REFERENCE POINTS

The Subcontractor shall be responsible for all engineering necessary for the proper execution and completion of the Work and shall confirm the Work to the reference points provided by the Construction Manager.

## N. LABOR RELATIONS

The Subcontractor agrees that in the performance of the Work it will employ only such labor as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workers employed on the construction site or on any other building, structure, or other improvement whether public or private which the Construction Manager may then be erecting or altering. In the event of a strike resulting from a union jurisdictional dispute, involving or affecting the labor employed by Subcontractor, the Construction Manager may, at its option, terminate this Subcontract but shall compensate the Subcontractor for the value of labor and material furnished proportioned upon the Contract Sum. All municipal, state, and federal Anti-Discrimination and Right-to-Work Laws will be observed by Subcontractor in the employment of all personnel for this Subcontract.

## o. FAILURE TO MAN

If the Subcontractor should refuse enough properly skilled workers or proper materials, then the Construction Manager may, after giving the Subcontractor 48 hours written notice, terminate the employment of the Subcontractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the Work by whatever method the Construction Manager may deem

expedient. In the event the Subcontractor shall correct the situation, which caused the notice of cancellation to be given to the Construction Manager, within the period of 48 hours from the time of receipt of such notice, the cause of cancellation shall be deemed waived, and this Subcontract shall continue in effect in the same manner as though such cause of cancellation had not existed, with the exception that the Construction Manager is obligated to make only one such notice and any subsequent refusal or failure of the Subcontractor to supply enough properly skilled workers or proper materials shall effect a termination of the employment of the Subcontractor without further notice to the Subcontractor.

#### P. GUARANTEE

(1) Subcontractor warrants and guaranties that all materials and equipment furnished under this Subcontract will be new unless otherwise specified, and that its work under the Subcontractor's Scope of Work will be of good quality, free from faults and defects and in conformance with this Subcontract. The Subcontractor shall repair and make good any defect in the Subcontractor's workmanship or materials that may appear within one (1) year after the date of that acceptance by the Construction Manager of the entire Project, it being understood that the Subcontractor's obligation under this Section shall not be conditioned upon a determination of any reason or cause for the existence of such defect.

(2) However, the foregoing Guarantee shall not deprive the Construction Manager of any action, right or remedy otherwise available to it for breach of any of the provisions of the Contract Documents by the Subcontractor, including but not limited to the failure of the Subcontractor to conform the Work to the design and performance criteria specified in such document.

#### Q. BRAND NAME APPROVAL

No later than ten (10) days following execution of this Subcontract, the Subcontractor shall provide the Construction Manager with the brand names of the materials the Subcontractor will be using in connection with the work. The brands shall be subject to the approval of the Construction Manager, which shall not be unreasonably withheld.

#### R. TESTS

The Construction Manager shall have the right to perform tests on samples, work in progress and completed work. Subcontractor shall supply labor and materials for such tests.

#### S. SAFETY

(1) Subcontractor agrees that the prevention of accidents to workers engaged upon or in the vicinity of the Project is its responsibility. Subcontractor agrees to comply with all Federal, State, County, and Municipal laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as shall be applicable to the Work, including, without limitation, the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules regulations, and orders which have been and shall be adopted or issued thereunder, and with safety standards established by Construction Manager, during the

progress of the Work. When so ordered, the Subcontractor shall stop any part of the Work which Construction Manager deems unsafe and shall immediately implement at Subcontractor's cost corrective measures satisfactory to Construction Manager. Subcontractor agrees that it shall not have or make any claim for damages growing out of such stoppages. Should the Subcontractor neglect to take such corrective measures, Construction Manager may do so at the cost and expense to the Subcontractor and may deduct the cost thereof from any payments due or to become due to the Subcontractor. Failure on the part of Construction Manager to stop unsafe practices shall in no way relieve the Subcontractor of its responsibilities therefore.

(2) Subcontractor agrees to reduce the Contract Sum by \$1,000.00 and/or removal from the site, as determined by the Construction Manager, for each occurrence when an employee of the Subcontractor or any employees of its subcontractors are on the premises and not wearing a hard hat or required eye protection, or is not properly using any other safety protection required by the character of the Work. Subcontractor agrees to remove any employee from the premises who is not in compliance and compromises safety.

(3) Subcontractor shall notify Construction Manager of any injury to any of its employees or any employee of its subcontractors on the day of the injury and provide a written description of the injury within 24 hours of such injury.

(4) Subcontractor shall hold weekly site safety "tool box" meetings and shall provide proper minutes of such meetings in writing to Construction Manager within five (5) working days after the meeting is held. Subcontractor understands that the trade foreman must attend Construction Manager's weekly site safety "tool box" meetings.

(5) When safety protection has been installed by others, if required for the performance of the Work, the Subcontractor may remove this protection for the installation of the Work and must replace such protection or provide a suitable and acceptable alternative in accordance with Federal, State, County and Municipal jurisdictional agency standards and which is also acceptable to Construction Manager.

(6) Notwithstanding any other provision of the Subcontract, the Subcontractor agrees that it is ultimately responsible for all construction safety procedures and precautions under Federal, State, County and Municipal law, and the Subcontractor shall hold, indemnify, defend and save the Owner, the Architect and Construction Manager and all of their employees and affiliates harmless from and against any and all claims or expenses including attorneys' fees and disbursements resulting from any act taken by any employee of the Subcontractor, its subcontractor, or any injury for damage caused by any unsafe or negligent act or occurrence resulting from, or in connection with, the Work.

The Construction Manager shall designate a responsible member of the Construction Manager's organization at the project whose duties shall include overseeing safety precautions and who shall also have authority to order the Subcontractor to stop any practice or correct any conditions deemed in his sole discretion, to be unsafe.

## **ARTICLE IX**

### **A. DISPUTE RESOLUTION**

Any and all disputes between the parties shall be resolved in a manner determined exclusively by the Construction Manager, including, but not limited to, arbitration with the American Arbitration Association. If Subcontractor wants to make a claim against the Construction Manager, Subcontractor agrees that it will inquire of the Construction Manager in writing, sent by Certified Mail, Return Receipt requested, which form of Dispute Resolution it desires be used for the claim. The Construction Manager shall have seven (7) days from the date it receives the written inquiry sent pursuant to this Article to respond to Subcontractor in writing setting forth the desired forum for the dispute. In the event that Arbitration is selected by the Construction Manager, such Arbitration shall take place in Morris County, New Jersey. If the Construction Manager fails or refuses to set forth a forum for the dispute, Subcontractor must choose litigation in the State courts located in the State of New Jersey, and venue shall be in such County in which Construction Manager is located. The only exception to the foregoing is where a specific statute of a particular State mandates that venue for a dispute take place in the State that the particular Project is located... If a dispute is resolved through Arbitration, the Construction Manager reserves the right to join all other necessary parties.

B. Pending final resolution of any dispute or claim, Subcontractor shall proceed diligently with the performance of the Subcontract.

C. Should Construction Manager employ an attorney to institute suit or demand arbitration to enforce any of the provisions of this Subcontract, to protect its interest in any matter arising under this Subcontract, to collect damages for the breach of this Subcontract, or to recover on a surety bond given by a party under this Subcontract, and Construction Manager prevails in said action, then in addition to any other damages Construction Manager may be awarded, Construction Manager is entitled to recover reasonable attorney fees, costs, charges and other expenses expended or incurred therein as part of its verdict or award.

## **ARTICLE X**

### **SEPARATE CONTRACTS**

The Construction Manager reserves the right to enter into other contracts in connection with the Project.

## **ARTICLE XI ASSUMPTION OF RISK**

The Subcontractor represents that prior to submitting its proposal for the Work it has examined carefully all of the Contract Documents, acquainted itself with the site and all other conditions relevant to the Work, and made all investigations essential to a full understanding of the difficulties which may be encountered in performing the Work. The Subcontractor assumes full and complete responsibility for, and all risk in connection with the Work. Should concealed conditions encountered in the performance of the Work below the surface of the ground be at variance with the conditions indicated by the Subcontract or should unknown physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Subcontract be encountered, then the Contract Sum shall be equitably adjusted by Modification Order upon claim by either party made within a reasonable time after the first observance of the conditions.

## **ARTICLE XII**

### **A. PROGRESS PAYMENTS**

The Construction Manager will make progress payments to the Subcontractor on account of the Contract Sum on or before the 30th day of the month an amount equal to 90%, provided that the payment has been made by Owner to the Construction Manager, of the value of work in place completed during the previous month and provided that an approved invoice is received by the 25th day of such preceding month.

If, in Construction Manager's discretion, Construction Manager makes payment to Subcontractor, minus retainage and/or other contractually allowed deductions, within 10 days of the first of the month following Subcontractor's timely submission of its invoice by the 25th day of the previous month, Construction Manager shall be entitled to deduct 2°10 of the monies owed

Subcontractor for Construction Manager approved Work in place. Thereafter, the Contract Sum shall be adjusted by this two percent (2%) reduction. Regardless of whether the Subcontractor's invoice is submitted on the 25th day of the month, Construction Manager shall be entitled to deduct 2°10 of the monies owed Subcontractor for Construction Manager approved



Work in place if such payment is made to Subcontractor within fifteen (15) days of receipt of such invoice consistent with this subsection.

The Subcontractor agrees that the Construction Manager has the right to make payment directly by joint check to any subcontractor, vendor, or supplier of the Subcontractor, and any such payments made by Construction Manager will be credited against any amounts otherwise owed to Subcontractor. No payment shall be made until all improper or rejected Work is corrected, and no payment shall be considered as an acceptance of any defective Work under this Subcontract. All material and Work covered by application, including any stored materials on or off-site, become the property of the Construction Manager and/or the Owner upon payment of the respective application.

#### B. CERTIFICATION AS TO PAYMENT AND WAIVER

As a condition precedent to the Subcontractor's receipt of a progress and/or final payment from the Construction Manager, the Subcontractor shall provide the Construction Manager with the following:

- (1) Written certification of the Subcontractor that payment in the sum of \$ Amount (specify the total of all payments the Subcontractor received to date from the Construction Manager for the Work) was received from the Construction Manager and that there are no liens or encumbrances whatsoever on the title to the premises relating to the Work;
- (2) Written certification of each of the Subcontractor's supplier and agents that it has no claims against or offsets as to the Subcontractor or the Construction Manager for work performed or materials supplied in connection with the Work;
- (3) Written waiver from the Subcontractor as to construction lien rights, if any, to the extent of \$ Amount [specify the total of all payments the Subcontractor received to date from the Construction Manager for the Work]; and
- (4) Written waivers from each of the Subcontractor's supplier and agents as to construction lien rights, if any, to the extent of \$ Amount [specify the total of all payments the person giving the waiver has received from the Subcontractor to date in connection with the work].
- (5) Work performed and requested to be paid for is accepted and approved by the Construction Manager, the Architect and the Owner.

(6) Approved and in force Certificates of Insurance on file with the Construction Manager and has supplied the Construction Manager with acceptable performance and payment bonds, if required, by the Construction Manager.

Construction Manager shall have the right to withhold payment for the Subcontractor's failure to submit a proper request for payment, failure to submit all required waivers of liens and releases, for claims of unpaid lower tier subcontractors or suppliers, for disputed claims, for defective Work not remedied, because of any delay on the part of the Subcontractor, for any breach of this Subcontract by Subcontractor, or for payments due to Construction Manager on this Project or any other project. Construction Manager may in its sole, exclusive and absolute discretion give guarantees or make payments to others for labor, equipment, material or services furnished or to be furnished on behalf of the Subcontractor and may deduct the amount of such guarantees or payments from any payments which may otherwise become due under this Subcontract. Construction Manager shall have the right to disregard any Schedule of Values that the Subcontractor may have furnished and defer or withhold in whole or in part any payment if it appears to the Construction Manager, in its sole, exclusive and absolute discretion, that the balance available in the Contract Sum, as adjusted and less retained percentages, may be insufficient to complete the Work. The obligations of the surety or sureties (if applicable) or the Subcontractor under any performance, payment or other bond given by such sureties and Subcontractor hereunder shall not be waived, released, or discharged by reason thereof. Neither the failure of the Construction Manager to retain any percentage payable to the Subcontractor, nor any payments made to the Subcontractor or on its behalf, which represent a change in or variations to the requirements of the Subcontract pertaining to the time, method, condition, or amount of payments to be made to the Subcontractor, nor the giving of any guaranty to others for labor and materials required to be furnished shall be construed in any manner to waive, release or discharge the obligations of the surety for sureties under any performance, payment or other bonds given by said sureties and Subcontractor hereunder.

Should the Construction Manager require the Subcontractor to provide performance and payment bonds for the Work, the bond instruments must accompany the Subcontractor's first draw and include a copy of the invoice for bond premium reimbursement. The surety bond forms and company underwriting the bonds must be acceptable to the Construction Manager as a precedent to any payment.

No payment shall constitute evidence of the performance or progress of the Work or imply acceptance by the Owner, Architect, or Construction Manager of the Work. Subcontractor agrees that payment by the Construction Manager constitutes a release of the Construction Manager from all claims, liabilities, other than retainage, for any Work, services, material, or equipment performed or provided during the period in which the payment relates. Acceptance of payment by the Subcontractor shall constitute a general release against the Construction Manager, its surety, and the Owner.

Subcontractor hereby agrees to make prompt payment to all lower-tier persons and/or entities furnishing labor, materials, services or equipment to Subcontractor in the prosecution of the Work hereunder, and that such payment is of the essence to this Subcontract. Subcontractor agrees that if and when requested to do so by Construction Manager it shall furnish such additional information, evidence and documents as Construction Manager may require with respect to the nature and extent of all obligations incurred by the Subcontractor for and in connection with its Work, and all payments made by the Subcontractor therefore, and the amounts remaining unpaid to any sub-Subcontractor or supplier. Subcontractor shall earmark all payments made to Subcontractor's sub-subcontractors, materialmen, and suppliers by: (a) identifying the

particular project which payment is being made; and b) including language on the check limiting application of the payments to bills owed on the particular project. In the event Subcontractor or its sub-subcontractors, suppliers, or materialmen, or a lower tier persons and/or entities acting through or under it or them, fails to pay any sum of money, including union dues and benefits, due any party furnishing labor, materials or equipment hereunder, or fails to pay any tax obligations or premiums due for insurance or surety bonds, the Construction Manager is hereby authorized to exercise its sole and exclusive and absolute discretion and retain out of any payment due or to become due hereunder any portion of said unpaid sum and to pay same directly to the party to whom the sum is due. The provisions of this paragraph shall not require Construction Manager to determine the validity of or adjust any claims or disputes between those parties furnishing labor, materials, services or equipment hereunder, or withhold any money or make payments for their protection; nor shall Construction Manager be liable to any party for its failure to do so.

The Construction Manager may deduct from any Contract Sum, any sum owed to the Construction Manager and in the event of any breach by Subcontractor of this Subcontract, or in the event of the substantial assertion by others of any claim or lien against the Owner, Construction Manager, or Construction Manager's surety, which claim or lien arises out of the Subcontractor's performance, the Construction Manager may retain out of any payment due to Subcontractor an amount sufficient to protect Construction Manager from any and all loss, damage or expense therefrom, until the claim or lien has been adjusted by the Subcontractor to the satisfaction of the Construction Manager, even though the Subcontractor may have posted a payment or performance bond.

#### C. VALUE OF WORK

The value of the work in place completed during the previous month shall be that amount which is estimated by the Subcontractor and approved by the Construction Manager. In the event of non-approval by the Construction Manager, the Construction Manager will apply to the Architect for certification as to the value of work in place completed during the previous month. The Architect shall determine the value of the work in the event of a dispute.

#### D. PARTIAL PAYMENTS

Partial payment shall not constitute acceptance of the Subcontractor's work by the Construction Manager or be construed as a waiver of any right or claim by the Construction Manager in connection with the Work.

#### E. INVOICES

The Subcontractor shall submit his invoices by the 25th of each month with detailed cost breakdown in accordance with the attached Application for Payment Form or the AIA 702 and 703 documents.

#### F. PAYMENTS TO SUBSUBCONTRACTOR AND SUPPLIERS

The Subcontractor, at the Construction Manager's request, shall furnish evidence of payments to his supplier, suppliers and employees.

## G. FINAL PAYMENT

The Construction Manager will make Final Payment to the Subcontractor after Subcontractor's Scope of Work is completed and accepted by the Owner and Architect, and once final payment has been made by Owner to Construction Manager.

Before submitting his application for Final Payment the Subcontractor shall, unless the Construction Manager shall otherwise direct, do the following:

- (1) Submit to the Construction Manager an affidavit certifying that the Subcontractor has paid all Federal, State and local taxes including excise, use and sales taxes and unemployment and workers compensation insurance.
- (2) Pay and obtain recorded releases of all notices of unpaid balance, lien claims, lis pendens, mechanics, materialmen's and like liens which affect the premises.
- (3) Deliver to the Construction Manager his written undertaking, with sureties acceptable to the Construction Manager:
  - (i) to promptly pay and obtain recorded releases as to any notices of unpaid balances, which shall mean lien claims, lis pendens, mechanics, materialmen's and like liens in connection with the work covered by this Contract which may in the future affect the premises: and
  - (ii) to defend and indemnify and save the Construction Manager harmless from any liability or expense because of any such lien or the enforcement thereof; and
- (4) Deliver to the Construction Manager all required guarantees and warranties; and
- (5) Deliver to the Construction Manager three (3) copies of operation and maintenance manuals for all major equipment; and
- (6) Deliver to the Construction Manager one reproducible drawing of any design work done by Subcontractor and two (2) sets of "As-Built" drawings (one in reproducible form).

## H. PAYMENT IN FULL

The Subcontractor, by acceptance of the Final Payment, warrants that he has received payment in full for his performance of the Subcontract and waives all further claims against the Construction Manager in connection with the Work. Final Payment by the Construction Manager shall be conclusive proof of the Construction Manager's performance of the Subcontract.

## ARTICLE XIII INSURANCE

### A DEFINITION

(1) Subcontractor, as used in this Article XIII shall mean the Subcontractor and any and all of the Subcontractor's supplier, employees, agents and representatives.

(2) Extended Coverage is the usual form currently available and covering perils of windstorm, hail, explosion, riot and civil commotion, damage from aircraft and vehicles and smoke damage.

### B. FIRE, EXTENDED COVERAGE, VANDALISM AND MALICIOUS MISCHIEF INSURANCE

(1) Owner or Construction Manager, will, at its expense, provide Fire, Extended Coverage, Vandalism, Malicious Mischief Insurance on the building under construction, including materials, plus equipment, machinery and apparatus, all of which are incorporated in and a part of the building at time of loss.

(2) Subcontractor will, at its expense, provide Fire, Extended Coverage, Vandalism, and Malicious Mischief Insurance on all unincorporated materials, supplies, equipment, machinery and apparatus. Owner and Construction Manager shall not be responsible in any manner for property, tools, equipment, or machinery (whether owned, leased, used, rented, borrowed or otherwise) of the Subcontractor or supplier or the employees or agents of either of them except as provided in the preceding paragraph.

### C. GENERAL PROVISIONS

Subcontractor, upon execution of this Subcontract and until final completion and acceptance of the Subcontract, shall maintain worker's compensation insurance, public liability insurance, property damage liability insurance, contractual liability insurance, umbrella liability insurance, comprehensive automobile liability insurance, and such other insurance as provided herein with an insurance company or companies acceptable to the Subcontractor in the following amount: SEE SCHEDULE "B" - INSURANCE LIMIT REQUIREMENTS

Compliance with this Article shall be evidenced by furnishing to the Owner and Construction Manager satisfactory certificates of insurance from acceptable carriers, prior to commencement of work under this Subcontract, which shall contain a statement that such policies will not be canceled until after at least thirty (30) days written notice by registered mail to that effect has been given to the Owner and Construction Manager. Each such insurance policy shall include the Owner and the Construction Manager as additional insured.

#### (1) PUBLIC LIABILITY INSURANCE

Subcontractor shall provide Public Liability and Broad Form Property Damage insurance including Completed Operations and the indemnity agreement as outlined in paragraph D. Limited coverage shall be in the amount as indicated on Schedule B attached hereto. Completed Operations Coverage shall be continued for not less than three (3) years after acceptance of the Work under Subcontract by the Construction Manager.

#### (2) AUTOMOBILE INSURANCE

Subcontractor shall provide Automobile Bodily Injury and Property Damage Insurance covering all vehicles owned and non-owned, moving under its own power and engaged in the Work under Subcontract. Limits are to be no less than called for in Schedule B.

#### (3) WORKER'S COMPENSATION INSURANCE

Subcontractor shall carry Worker's Compensation Insurance on his employees and cause any and all of the Subcontractor's supplier, employees, agents and representatives to carry such insurance on their employees in accordance with the laws of the State in which the Work is to be performed.

#### (4) HAZARD INSURANCE

Hazard insurance coverage shall be provided by the Subcontractor for all materials stored on or off site for which payment is included in monthly invoices, and a certificate of insurance indicating the Construction Manager and the Owner as additional insured shall be attached to the invoice.

#### (5) POLLUTION INSURANCE

Site Subcontractors or such Subcontractors that handle contaminated soils and/or materials, as reasonably determined by Construction Manager, shall carry insurance covering the hazardous and/or contaminated soils or materials which may be either brought to and/or removed from the Site by Subcontractor and/or which are contaminated by Subcontractor and/or its agents as a result of their activities on or about the Site.

#### D. INDEMNITY AGREEMENT

To the fullest extent permitted by law, the Subcontractor agrees to defend, indemnify and hold harmless the Construction Manager, the Owner, and any other party whom the Construction Manager has agreed to defend, indemnify and hold harmless, as well as each of their officers, directors, partners, agents, servants, employees, successors and assigns (collectively, the "indemnitees") from and against any and all claims, damages, losses, costs and expenses of any kind, including but not limited to attorney's fees, incurred by reason of any breach of Subcontract, environmental claims, arising out of or in any way connected with the performance or lack of performance of the Work under this Subcontract, and any change orders or additions to the Work included in this Subcontract, any liability for damage because of bodily injury, including death resulting from such injuries, or property damage to real and personal property of any kind whatsoever,

sustained by any person or persons, whether employees of the Subcontractor or otherwise, resulting from, arising out of, or occurring in connection with the performance of the Work provided for in this Subcontract, together with any change orders or additions to the work included in the Subcontract.

The Subcontractor agrees that the obligation to defend, indemnify and hold harmless, as described above, specifically includes the obligation to defend, indemnify and hold harmless the indemnitees for the indemnitees' shall be absolute, excepting from the foregoing the sole negligence of the Construction Manager.

The Subcontractor agrees that the obligation to defend commences when a claim is made against an indemnitee, even if the Subcontractor disputes its obligation to indemnify and hold harmless. The defense shall be provided through counsel chosen by the indemnitee, and the Subcontractor agrees to pay for the defense of indemnitee upon demand.

The indemnity obligation under this Subcontract shall not be construed to negate, abridge, or reduce any other right or obligation of indemnity that would exist as to any person or entity described in this Subcontract. The indemnity obligations set forth in this Subcontract shall not be limited by any limitation on the amount or type of damages, compensation or benefit payable by or for Subcontractor. In addition, the indemnification obligations under this Subcontract shall not be limited in any way by the amount or type of insurance required to be provided to or for the benefit of an indemnitee as described in this Subcontract.

The obligation to defend, indemnify and hold harmless, as described above, survives completion or acceptance of the work. This indemnification clause supersedes any other indemnification clause in the contract documents, including those that are incorporated by reference, that conflict with it in any way. Subcontractor also agrees to contractually bind its subcontractors (if any) to defend, indemnify and hold harmless the indemnitees to the same extent as the Subcontractor is obligated. This indemnification clause, irrespective of any other choice of law provision, shall be interpreted according to the laws of the State of New Jersey.

## E. EXCLUSIONS

No policy shall contain any provisions for exclusions from liability other than provisions to exclude from liability forming part of the standard basic unamended and unendorsed form of policy, except that no exclusions will be permitted in any event if it conflicts with a coverage expressly required in this Subcontract, and in addition, no policy shall contain any exclusions from bodily injury to or sickness, disease or death of any employee of Subcontractor which would conflict with or in any way impair coverage under the contractual liability endorsement of the liability of the Subcontractor under this Subcontract.

## F. FAILURE TO MAINTAIN

In the event of the failure of the Subcontractor to furnish and maintain such insurance, the Construction Manager immediately may terminate this Subcontract or take out and maintain the said insurance for and in the name of the Subcontractor and Subcontractor agrees to pay the cost thereof and to furnish all necessary information to permit the Construction Manager or the Owner to take out and maintain such insurance for the account of Subcontractor. Compliance by Subcontractor with the foregoing requirements to carry insurance and furnish certificates shall not relieve Subcontractor from liability otherwise assumed under any other provisions of this Subcontract.

## G. INSURANCE CONFIRMATION AND CONSEQUENCES.

Periodically during performance of the Work, in Construction Manager's sole discretion, Construction Manager may request that Subcontractor provide evidence that the insurance policies then in effect (the "Insurance Policies"), are currently paid and in full force and effect. In the event that Subcontractor cannot provide such proof, the Construction Manager may, in its discretion, pay such amounts that are owed to make the Insurance Policies currently paid and in full force and effect through the completion of the Subcontractor's Work (hereinafter the "Insurance Payment"). The Insurance Payment, plus 20% of the Insurance Payment as an administrative fee (the "Administrative Fee"), will be deducted from any amounts owed to the Subcontractor. In the event that the Insurance Payment and the Administrative Fee is more than the amounts owed to the Subcontractor, the Subcontractor shall immediately pay such difference to Construction Manager, and in such instance, Construction Manager will have no further payment obligations to the Subcontractor. In the event that the Subcontractor does not maintain the Insurance Policies as provided herein, the Construction Manager, may, in its sole and absolute discretion, immediately terminate the Subcontractor without providing Subcontractor the ability to cure such breach. In addition, the Construction Manager may withhold such amounts which may be due to Subcontractor, in an amount reasonably determined by Construction Manager in its reasonable discretion, until such time that the damages resulting from such loss attributable to Subcontractor not maintaining the Insurance Policies, can be determined by Construction Manager.

## ARTICLE XIII - Schedule B INSURANCE LIMIT REQUIREMENTS

A. The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability of no less than:

(1) COMMERCIAL GENERAL LIABILITY (CGL) with limits of Insurance of not less than \$1,000,000 each occurrence and

\$2,000,000 Annual Aggregate.

(i) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.



(ii) CGL coverage shall be written on ISO Occurrence form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent Subcontractors, products-completed operations, and personal and advertising injury.

(iii) Construction Manager, Owner and all other parties required of the Construction Manager, shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG 20 10 (11 85) or CG 20 10 (10 93) AND CG 20 37 (10 01) or CG 20 33 (10 01) AND CG 20 37 (10 01) or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured supplier. It shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.

(iv) Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.

(v) Subcontractors CGL Policy will not contain any exclusions for Residential Work or Limitations including but not limited to condominiums, coops, multi-family housing, apartments, nursing homes or dormitory housing.

(vi) Subcontractors CGL policy will not contain any exclusions for bodily injury to employees, work at heights, territorial or any other exclusion deemed unacceptable to the Contractor.

(vii) Any special exclusions not within the standard unendorsed Comprehensive General Liability Form (CG 0001-10-

01) must be approved by

## (2) AUTOMOBILE LIABILITY

(i) Business Auto Liability with limits of at least \$1,000,000 each accident

(ii) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

(iii) Construction Manager, Owner and all other parties required of the Subcontractor, shall be included as insureds on the auto policy.

## (3) COMMERCIAL UMBRELLA

(i) Umbrella limits must be at least \$5,000,000.

(ii) Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.

## (4) WORKERS COMPENSATION AND EMPLOYERS LIABILITY

(i) Employers Liability Insurance limits of at least \$1,000,000 each accident, \$1,000,000 for bodily injury by accident, and

\$1,000,000 each employee for injury by disease.

(ii) Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy.

(iii) Where applicable, the Maritime Coverage Endorsement shall be attached to the policy

#### (5) POLLUTION INSURANCE

(i) Coverage limits must be at least \$2,000,000.

(ii) Coverage must include as insureds all entities that are additional insureds on the CGL.

#### (6) COVERAGE FOR ANY THIRD PARTY PERFORMING WORK ON BEHALF OF SUBCONTRACTOR.

(i) Subcontractor shall not sublet any part of the Work without assuming full responsibility for requiring similar insurance from its subcontractors and shall submit satisfactory evidence to the Construction Manager. Each such policy shall include the Owner and the Construction Manager as an additional insured.

#### B. WAIVER OF SUBROGATION

Subcontractor waives all rights against Construction Manager, Owner and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per requirements stated above. Subcontractor's Workers Compensation policy has WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT with Construction Manager and Owner listed on SCHEDULE.

#### ARTICLE XIV THIRD PARTY

All guarantees and warranties received by the Subcontractor or his supplier from material dealers, equipment makers or supplier shall be approved by the Construction Manager and shall be made or assigned directly to the Construction Manager. Such guarantees, however, shall be enforced by the Subcontractor if the occasion arises. If the makers of the guarantees or warranties fail to fulfill their obligations there under, any costs incurred by the Construction Manager in connection with such failure shall be at the expense of the Subcontractor.

## ARTICLE XV

### CONTRACT TERMINATION AND SUSPENSION

#### A. TERMINATION FOR CAUSE

(1) The Construction Manager may terminate this Subcontract or any part thereof after two (2) days written notice is mailed to, delivered personally, or left at the Subcontractor's place of business should any of the following conditions occur:

- i. Subcontractor refuses or neglects to supply sufficient, properly skilled workmen as directed by the Construction Manager;
- ii. Subcontractor refuses or neglects to supply materials of the proper quality and quantity as specified in the Contract Documents and directed by the Construction Manager;
- iii. Subcontractor becomes insolvent or unable to pay its obligation as it matures;
- iv. Subcontractor, in the opinion of the Construction Manager, fails in any respect to prosecute the Work with sufficient promptness and diligence to ensure completion in accordance with the progress schedule prepared by the Construction Manager, or fails in the performance of any of the terms and conditions in this Subcontract;
- v. If the Construction Manager, in its sole judgment, believes that the Subcontractor cannot perform all or some of its obligations under this Subcontract; or
- vi. If the Architect or Owner determines that the Work is not in accordance with the Contract Documents

(2) Upon such termination, the Construction Manager may:

- i. Use any materials, implements, equipment, appliances, or tools on the site furnished by or belonging to the Subcontractor in completing the Subcontractor's Scope of Work;
- ii. Take over any subcontracts or purchase orders of the Subcontractor, which subcontracts and purchase orders the Subcontractor hereby assigns to the Construction Manager effective upon termination or taking over of the Scope of Work of the Subcontractor in whole or in part, as herein provided; and
- iii. Itself or through another Subcontractor furnish any such labor and/or material, in whole or in part, and offset the cost thereof and expenses therefore against any money due or to become due hereunder.

(3) Subcontractor shall be liable for any excess cost to complete Subcontractor's Scope of Work after Termination.

(4) If this Subcontract is wrongfully terminated or the Construction Manager in its sole discretion determines at any time to change the termination for default to a termination for convenience, the Subcontractor agrees that such termination will be deemed to be a cancellation for convenience of this Subcontract under this Article, and Subcontractor shall only be entitled to receive such sums that were to become due upon a termination for convenience of this Subcontract. In no event shall the Subcontractor be entitled to recover anticipated profit upon any unperformed work.

(5) Without limitation, the following obligations, among others shall survive the termination or cancellation of this Subcontract: (i) warranties and guarantees of the Work performed, to the extent that the Work has been performed; (ii) the obligations of the Subcontractor to have performed said Work in accordance with the terms of the Contract Documents; (iii) obligations to defend, indemnify and hold harmless; (iv) payment of taxes, damages, losses and expenses, certifications as previously provided by the Subcontractor or on behalf of Subcontractor; and (v) delivery of materials, data on electronic media and as-built drawings, correction of work, removal of liens, mitigation of damages, including when applicable costs to complete and cooperate with the Construction Manager or construction lender.

(6) The remedies provided under this Article shall be separate and in addition to any other remedies the Construction Manager may have under the Contract Documents or at law or in equity. Subcontractor's guarantors and sureties agree to be bound to the Construction Manager, with respect to such other entities notwithstanding any language to the contrary in their instruments of guaranty or their surety bonds.

(7) Notwithstanding anything to the contrary herein and regardless of whether the termination is complete or partial, whether the termination is for default or for no fault, and whether the termination converted from default to convenience, the Subcontractor's sole and exclusive remedies for termination of this Subcontract shall be those expressly provided and under no circumstances, shall the Subcontractor be entitled to special, consequential, or punitive damages, anticipated or lost profit, or other recovery of any nature except for payment for Subcontract work properly performed and actually completed by the Subcontractor. In no event shall the Subcontractor be entitled to any compensation for Subcontract Work not performed by the Subcontractor or for payment in excess of the Subcontract amount as may be adjusted by property authorized written Change Orders.

## B. TERMINATION FOR CONVENIENCE

(1) The Construction Manager, during the pendency of this Subcontract, may terminate Subcontractor for the Construction Manager's convenience and without cause.

(2) If the Construction Manager terminates Subcontractor for convenience, Subcontractor shall immediately stop all work it is performing, cease ordering materials, terminate all supplier and protect Subcontractor's Scope of Work that is in place.

(3) In the event of a Termination for Convenience, Subcontractor shall be paid for all work in place.

### C. SUSPENSION

Construction Manager, the Owner or Architect may at any time, or for any reason, issue a written directive to Subcontractor to suspend or stop work or any part thereof. Such direction shall be in writing and shall specify the period in which the work is to be suspended or stopped. Subcontractor shall resume the Work upon the date specified, and the manner specified or directed, or upon such other date as the Construction Manager may thereafter specify in writing. The period during which the Work shall be suspended or stopped, if warranted under a schedule analysis of critical delays to the substantial completion date, and if the suspension or stoppage was through no fault of the Subcontractor, additional time may be added to the time fixed for performance. At no time, however, shall that time added, be greater than the time authorized by the Owner. A suspension or stoppage of work pursuant to this provision shall not give rise to any claim against the Construction Manager for additional compensation. This clause shall not serve as any limitation on the Construction Manager to seek damages, backcharges, set off, or claims that the Construction Manager may assert against the Subcontractor for any stoppage or delays proximately caused by the acts or omissions of the Subcontractor.

IN WITNESS WHEREOF, CONSTRUCTION MANAGER and SUBCONTRACTOR have signed this Subcontract which has been negotiated and prepared through the joint efforts of the parties, and in so doing, the parties have read, understand, had an opportunity to review with legal counsel and accept all terms and conditions herein. Furthermore, the parties by signing this contract agree the Subcontract does not benefit one party over the other.

SUBCONTRACTOR

BY:

WITNESS: ADDRESS:

Date

CONSTRUCTION MANAGER:

BY:     Date