

TOCCI BUILDING CORPORATION

Subcontract No. Enter Number
Cost Code Enter Code
Vendor No. Enter Number

STANDARD SUBCONTRACT AGREEMENT

LONG FORM

A. **AGREEMENT** made as of the number day of Month in the year of 20 between the **Contractor:**

Tocci Building Corporation

660 Main Street
Woburn, MA 01801
Tel.: (781) 935-5500 / Fax: (781) 935-1888

and the **Subcontractor:**

Company	Enter Information		
Street	Enter Information		
City, State Zip	Enter Information		
Telephone	Enter Information	Fax	Enter Information

The Contractor has entered into an Agreement for construction of the following **Project:**

Project Name	Enter Information
Street	Enter Information
City, State Zip	Enter Information

with the **Owner:**

Company	Enter Information		
Street	Enter Information		
City, State Zip	Enter Information		
Telephone	Enter Information	Fax	Enter Information

which Agreement is hereinafter referred to as the Prime Contract and which provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

B. DEFINITIONS

B.1 ARCHITECT

Company	Enter Information		
Street	Enter Information		
City, State Zip	Enter Information		
Telephone	Enter Information	Fax	Enter Information

- B2. SCOPE OF THE WORK (the "Work):** Describe scope of work. All as set forth in **Exhibit A: Scope Requirements.**
- B3. CONTRACT DOCUMENTS:** The documents listed in **Exhibit B: List of Contract Documents.**
- B4. SUBCONTRACT SUM:** \$
- B5. ALTERNATES**
1. Item + add lines as needed
- B6. UNIT PRICES.** Attached as **Exhibit X: Alternate Unit Prices & Labor Rates.**
- B7. MARK-UP ON CHANGE ORDERS: Describe**
- B8. RETAINAGE:** Describe. If this Subcontract is subject to M.G.L. c. 149 § 29F, then retainage shall be five percent (5%)
- B9. ANTICIPATED PROJECT SCHEDULE:** Attached as **Exhibit C: Project Schedule.**
- B10. DESIGNATED SUBCONTRACTOR CONTACT:** Name
- B11. DESIGNATED SUBCONTRACTOR SAFETY PERSON:** Name
- B12. EXHIBITS (R=Required / S=Supplemental (use if required))**
- R EXHIBIT A Scope of Work
 - R EXHIBIT B Contract Document List
 - R EXHIBIT C Project Schedule
 - R Exhibit C-1 Material Status Log
 - R Exhibit C-2 Submittal Schedule Log
 - R EXHIBIT D Insurance Rider
 - R EXHIBIT E Change Estimate/Change Order Procedure
 - R EXHIBIT F Application for Payment Procedure
 - R Exhibit F-1 Subcontractor's Application and Certificate for Payment
 - R Exhibit F-2 Subcontractor's Application and Certificate for Payment Continuation Sheet
 - R Exhibit F-3 Subcontractor Final Payment Certification and Release
 - S EXHIBIT G Design Build Services Rider / Applicable Not Applicable
 - S EXHIBIT H Contractor Controlled Insurance Program / Applicable Not Applicable
 - R EXHIBIT I Standard Subcontractor Environmental Health and Safety Practice
 - S EXHIBIT J Site Logistics Requirements / Applicable Not Applicable
 - S EXHIBIT K Project VDC/Coordination Requirements / Applicable Not Applicable
 - S EXHIBIT L Supplemental Terms and Conditions / Applicable Not Applicable
 - S EXHIBIT M Compliance / EEO Plan / Applicable Not Applicable
 - S EXHIBIT N Project Labor Agreements / Applicable Not Applicable
 - S EXHIBIT O-1 Payment Bond / Applicable Not Applicable
 - S EXHIBIT O-2 Performance Bond / Applicable Not Applicable
 - R EXHIBIT PS Project Specific Requirements
 - S EXHIBIT X Unit Prices & Labor Rates / Applicable Not Applicable
 - S EXHIBIT Z Supplemental Purchase Order Terms and Conditions for Purchases with Labor Component

C. ARTICLES

The Contractor and Subcontractor agree as follows:

ARTICLE 1 THE SUBCONTRACT DOCUMENTS

1.1 The Subcontract Documents consist of (i) this Agreement and all exhibits; (ii) all documents identified in the Contract Document Rider – Exhibit B, and (iii) Modifications or Change Orders issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or

repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

1.2 The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

1.3 The Subcontractor shall be furnished copies of the Contract Documents upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction. A copy of the Prime Contract and all enumerated Contract Documents as defined therein are available in the Contractor's home office Plan Room and/or at the Contractor's on site Project Office and in electronic data storage as identified in Exhibit PS, Project Specific Requirements.

1.4 The Contract Documents are intended to be read as a whole, and any Work required by one part and not mentioned in another (e.g., item shown in drawing and not mentioned in the specifications, or mentioned in the specifications and not shown in drawing), shall be executed to the same extent as though required by all. The addition, omission or incorrect placement of a word or character in one part of the Subcontract shall not change the intent of the Subcontract as a whole, and shall not constitute the basis for a claim by the Subcontractor for an increase in the Subcontract Amount or an extension of time within which to perform and complete the Work. In the event of a conflict between one or more provisions of the Contract Documents, the provision imposing the more demanding term, condition, duty or standard of performance, or the greater limitation on the nature and type of relief or damages allowed to Subcontractor, shall control. A conflict exists in the Contract Documents when the same subject matter is addressed by two or more provisions of the Contract Documents in a manner that cannot be reconciled to give effect to all provisions. In the various parts of the Contract Documents where reference is made to applicable codes and standards, the Work shall, except as otherwise specified, conform to the latest issue of the referenced code or standard available at the time the Work is performed.

1.5 Subcontractor shall carefully study and compare the Contract Documents and notify Contractor in writing of any error, inconsistency, omission or ambiguity prior to executing any affected Work. Contractor's determination of the Subcontract requirements in view of the error, inconsistency, omission or ambiguity shall be final and Subcontractor shall perform the Work consistent with that determination, subject to dispute resolution under **Article 6**. Subcontractor shall be liable for any added costs or damage resulting from its performance of any Work involving an error, inconsistency, omission or ambiguity in the Contract Documents that has not been reported to Contractor, including any re-performance and related costs of correction and any additional costs incurred by the Contractor.

ARTICLE 2. MUTUAL RIGHTS AND RESPONSIBILITIES

2.1 The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of the Prime Contract (and the "Contract Documents" as defined therein) apply to the Work, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under the Contract Documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, under such documents, has against the Owner, insofar as applicable to the work under this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

2.2 The Subcontractor shall enter into agreements with Sub-subcontractors performing portions of the Work by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities which the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other which the Contractor and Subcontractor have by virtue of the provisions of this Agreement

ARTICLE 3. CONTRACTOR

3.1 Time is of the essence of this Agreement. The Contractor shall provide the Subcontractor with information concerning and copies of the applicable Project schedule. The Contractor shall provide to the Subcontractor notice regarding the required mobilization of the Subcontractor in accordance with the applicable Project schedule. The Subcontractor shall be notified by the Contractor of schedule changes as they occur. The Subcontractor agrees and acknowledges that the Contractor has the right, in its sole discretion, to make revisions, changes, adjustments, and sequencing alternations to the Project schedule from time to time as necessary and the Subcontractor expressly agrees and acknowledges that it shall be bound to, and abide by, such revisions, changes, adjustments, and sequencing alterations to the Project schedule, and that it will adjust and conform its work accordingly, at its cost, to meet all completion dates of this Subcontract as set forth herein.

3.2 CONTRACTOR REMEDIES

3.2.1. Notwithstanding anything to the contrary set forth herein, and without waiving or prejudicing any of its other rights conferred herein or otherwise, should the Subcontractor at any time refuse or neglect to supply a sufficient number of properly skilled workmen or materials of the proper quantity, and quality, or fail in any respect to prosecute its Work promptly and diligently for any reason, or fail to perform any of the obligations on its part herein contained, or cause by any act or omission the stoppage, impediment, obstruction, hindrance or delay of or interference with or damage to the Work, or the work of any other contractors or subcontractors on the Project, or fail in the performance of any of the terms and provisions of this Agreement or of the Contract Documents, or should the Owner and/or Architect determine that the Work or any portion thereof is not being performed in accordance with the requirements of the Contract Documents, then, in any such event, the Contractor shall be permitted, after twenty-four (24) hours' written notice to the Subcontractor, to assume control of all or portions of the Work and to provide any such labor or materials or both, enter upon the Project premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, all of which the Subcontractor hereby transfers, assigns and sets over to the Contractor for such purpose, and deduct the cost thereof from any money due or thereafter becoming due to the Subcontractor. In addition, if Contractor places Subcontractor on written notice to correct defective or deficient Work, then the Subcontractor must commence remedial action within a reasonable amount of time, not to exceed two (2) working days. In the event Subcontractor fails to commence remedial action within a reasonable amount of time, Contractor may commence such remedial action and backcharge Subcontractor for the costs incurred

3.2.2. The Subcontractor shall be liable to the Contractor for all costs the Contractor incurs as a result of the Subcontractor's failure to perform this Subcontract in accordance with its terms. The Subcontractor's failure to perform shall include the failure of its suppliers and/or sub-subcontractors of any tier to perform. The Subcontractor's liabilities shall include, but not be limited to (a) damages and other delay costs payable by the Contractor to the Owner; (b) the Contractor's increased costs of performance, such as extended general conditions increased performance costs resulting from Subcontractor-caused delays or improper Work (plus overhead markup of 15%); (c) warranty and re-work costs (plus overhead markup of 15%); (d) liability to third parties; (e) attorneys fees and related costs incurred by the Contractor in any proceeding against the Subcontractor or its sureties to enforce any of the Contractor's rights as provided herein (including, without limitation, the attorneys fees and related costs arising from trial/arbitration, confirmation of such arbitration by the appropriate court, and enforcement of the confirmation and/or any judgments); and (f) costs of compliance, expense and damages, including but not limited to fines and penalties assessed against the Contractor incurred as a result of violations of safety or any other laws rules, codes or relations by the Subcontractor.

3.2.3. Should the Subcontractor default in or breach any of its obligations under the Subcontract Documents, and/or if the Contractor exercises its rights under the Subcontract to terminate the Subcontractor's performance under the Subcontract, the Contractor shall have the right and the option, to be exercised in the Contractor's sole discretion at any time, to satisfy, in whole or in part, any damages incurred by, or amounts due or to become due to, the Contractor as a result of said default, breach and/or termination from amounts that would otherwise be due or become due to the Subcontractor on any other project for which the Contractor has engaged the Subcontractor to perform work. The rights, duties and obligations conferred under this paragraph shall survive any termination of the Subcontract.

3.2.4. Each of the Subcontractor's liabilities as set forth herein shall be equally binding against Subcontractor's surety in connection with any surety bonds issued in relation to the Project.

ARTICLE 4. SUBCONTRACTOR

4.1 EXECUTION AND PROGRESS OF THE WORK

4.1.1. The Subcontractor shall complete the Work in a first-class manner equal in all respects to the best standards of practice and to the full satisfaction of the Contractor in strict conformity with the Contract Documents. The Subcontractor shall supervise and direct the Work, and shall cooperate with the Contractor in scheduling and performing the Work to avoid conflict, delay in or interference with the work of the Contractor, other subcontractors, or the Owner's own forces. The Subcontractor shall provide all labor, materials, equipment, tools, equipment and other facilities and services necessary for the performance and completion of the Work as an independent contractor. No exclusion or changes from the drawings, specifications or bid instructions contained in the Contract Documents will be permitted unless first submitted in writing and accepted in writing by the Contractor. All claims by Subcontractor for any such exclusions or changes must be submitted in accordance with, and are subject to, **Article 5** of this Subcontract.

4.1.2. Subcontractor represents that it has, or has had full opportunity to, examine the Project site and Contract Documents; that it has satisfied itself as to the requirements of the Work and all conditions which may affect the Work, including but not limited to the availability and costs of labor, services, equipment, materials, supplies and other items required for the Work, the observable condition of the Project site and access thereto to perform the Work and actual and anticipated local weather conditions; that the Subcontract Amount and Schedule have been determined with due regard for all such requirements and conditions which do or may affect the Work; and, that its entry into the Subcontract has not been induced either wholly or in part by any promises, representations or statements by or on behalf of Contractor, Owner and/or the Architect, other than those set forth in the Subcontract. Subcontractor acknowledges and accepts the risk of mistake or error with respect to all matters within the scope of its Project investigation, and agrees that it shall not be entitled to, and shall make no claim for, any additional compensation or damages of any kind or character or an extension of time for performance should any requirements or conditions applicable to the Work be different from or in addition to those identified by Subcontractor through such reasonable investigation.

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

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

4.1.5. Where testing agency standards are referenced in the Contract Documents, all materials to be incorporated into the Work shall be tested and certified by an approved, independent testing firm acceptable to the Contractor. Subcontractor is responsible for the cost of all required testing associated with its Work. Subcontractor shall make every effort to coordinate and cooperate with the Owner and/or Contractor to cooperate with any inspections. Subcontractor shall make all provisions for the Owner and/or Contractors needs to inspect work. This should include, but not limited too; inspection by 3rd-party testing, rigging, boom-lifts, staging etc.

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

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

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

4.1.9. The Subcontractor shall pay for, and its remuneration hereunder shall include, all applicable taxes, including but not limited to any and all sales and use taxes that may accrue in any of the United States on account of the materials furnished by the Subcontractor hereunder, and shall provide Contractor with such proof of payment as the Contractor may request, including, but not limited to a Certificate of Compliance or other similar document from the applicable taxing authority. Out of state subcontractors are responsible for providing any and all sales tax, use tax, or other applicable tax bonds or deposits in accordance with local law. Subcontractor shall similarly provide the Contractor with the proof of such bonds or deposits as the Contractor may request. The Contractor may condition final payment under this Subcontract on the same. The Subcontractor agrees to indemnify and hold harmless the Contractor and Owner from any liability associated with taxes that are the Subcontractor's obligation hereunder, which indemnity shall survive the termination of this Subcontract. The Subcontractor shall also pay for, and its remuneration hereunder shall include, fees, permits, hoisting, scaffolding, rigging, access, clean-up, supervision, coordination, overhead, etc. to perform the Work.

4.1.10. The Subcontractor will be responsible for all layout, lines and grade and coordination required to complete his scope of work.

4.1.11. The Work shall proceed continuously and progressively until full completion of the Project.

4.1.12. In support of the Project Schedule, Subcontractor shall, as a condition precedent to Contractor's obligation to process Subcontractor's first estimate for payment, furnish Contractor with an itemized breakdown of Subcontractor's Work, which shall include the anticipated sequence of the Work and durations in terms of days and man-hours for the work activities necessary to complete the Work in the time required to support the Project Schedule. Subcontractor represents that it shall: (i) prepare documents that are feasible and realistic for the planning, scheduling and coordination of the Work, and (ii) prepare schedules, updates, revisions and reports that accurately reflect Subcontractor's reasonable expectations as to the sequence of activities, duration of activities, productivity or efficiency, projected and actual completion of any Work item or activity, and delays or problems expected or encountered and specified float time.

4.1.13. If requested by Contractor, Subcontractor shall maintain and update on a monthly basis (or more frequently if requested) a cost and resource loaded critical path method schedule for the Subcontractor's Work, which depicts Subcontractor's Work activities with logic ties for preceding/restraining work, duration, cost and/or crew size.

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

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

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

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

4.1.18. The Subcontractor shall promptly submit shop drawings, product data, samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors. By submitting shop drawings, product data and samples, the Subcontractor thereby represents that it has determined and verified all measurements, field construction criteria, materials, catalog numbers and similar data, and that it has checked and coordinated each shop drawing and sample with the requirements of the work and of the Contract Documents.

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

4.1.20. Subcontractor shall maintain construction drawings, models and other data and documents at the Project site and in electronic data form, and update them each workday as required to accurately reflect the progress of the Work. Subcontractor shall make such drawings, data and documents available for the Contractor's review at the Project site upon request, and at least on a monthly basis in connection with the Subcontractor's estimates for payment. Subcontractor shall furnish final as-built drawings to Contractor as part of its completion of the Work. Subcontractor's compliance with this **paragraph 4.1.20** is a condition precedent to the Contractor's obligation to make interim progress payments and final payment to Subcontractor.

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

4.1.22. When professional certification of performance or design criteria of equipment, materials, systems or other items is required to be furnished by Subcontractor under the Subcontract, Contractor shall be entitled to rely upon such certification and shall not be expected or required to make any independent examination with respect thereto.

4.1.23. Contractor's or Architect's review or approval of any Subcontractor submittals shall not relieve Subcontractor of any of its obligations under the Subcontract.

4.1.24. Subcontractor shall not substitute any equipment, materials, supplies, specified by the Contract Documents, or any procedures or methods specified by the Contract Documents for performing the Work unless it first submits a written proposal to Contractor for substitution that complies with all applicable Subcontract requirements and Contractor thereafter approves the substitution in writing. Subcontractor acknowledges that unless expressly permitted by the Contract Documents, Subcontractor shall not be entitled to substitute any equipment, materials, supplies, procedures or methods specified by the Contract Documents.

4.1.25. The Subcontractor shall provide to the Contractor seven full sets of all shop drawings, product data, samples and similar submittals or two full sets of such documents more than are called for by the Contract Documents, whichever is more.

4.1.26. Within fifteen (15) days after the Effective Date, Subcontractor shall submit for Contractor's approval Subcontractor's itemized schedule of values that allocates the Subcontract Amount to the various portions of the Work. The schedule of values shall be in the form and supported by data to substantiate its accuracy as required by the Contract Documents, or as Contractor may reasonably require. Upon acceptance by Contractor, Subcontractor will use the schedule of values as the basis for its periodic estimates for payment. If it is later determined that the schedule of values is unbalanced, the Subcontractor shall revise the schedule as necessary and submit a revised schedule of values for

Contractor's approval. Subcontractor's submission of the required schedule of values is a condition precedent to Contractor's obligation to make payments to the Subcontractor.

4.1.27. The Subcontractor agrees that the Contractor, the Owner and the Architect will each have the authority to reject Work which does not conform to the Contract Documents. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor. Within twenty-four (24) hours after receiving Contractor's written notice rejecting any Work performed or equipment, materials, supplies or other items furnished, Subcontractor shall take down the rejected Work and remove the rejected equipment, materials, supplies or other items from the Project site.

4.1.28. The Subcontractor shall pay for all materials, equipment, services and labor used in connection with the performance of this Subcontract, through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

4.1.29. The Subcontractor shall take necessary precautions to protect properly the Work of other subcontractors from damage caused by operations under this Subcontract.

4.1.30. The Subcontractor shall cooperate with the Contractor, other subcontractors and the Owner's own forces whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordination drawings or the like in areas of congestion, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors or the Owner's own forces.

4.1.31. Subcontractor shall engage a sufficient number of competent supervisory personnel as are necessary to perform the Work in accordance with the requirements of the Subcontract. Subcontractor shall further have a competent superintendent continuously on the Project site during work hours and readily available on call. The superintendent shall be fully acquainted with the Work and shall have the authority to administer the Subcontract on Subcontractor's behalf and shall not be changed except with the consent of Contractor. The Subcontractor shall, upon execution of this Subcontract, designate in writing an official representative of the Subcontractor, who shall have full authority to act on any and all matters pertaining to the execution of this Subcontract and whose acts will be binding upon the Subcontractor

4.1.32. Subcontractor shall provide all technical personnel required to start-up, test, commission and operate any equipment and to test and use any material, supplies or other items used or supplied by Subcontract in connection with the Work and to instruct Contractor's and Owner's personnel in the operation and maintenance of any such equipment, materials, supplies or other items.

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

4.1.34. Subcontractor shall be responsible for all labor relations matters relating to its performance of the Work and shall at all times maintain harmony among the personnel employed by it and its Sub-subcontractors in connection with the Project with those of Contractor, Owner and their other contractors. Subcontractor shall at all times use all reasonable efforts and judgment as a skilled and experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes. Subcontractor shall notify Contractor as promptly as possible of any actual or potential labor dispute that may affect the Work. If a labor condition threatens the timely completion of any portion of the Work and Subcontractor fails to give satisfactory assurance of its ability to complete the Work in a timely manner, or Subcontractor fails to employ labor that is compatible and in harmony with other labor employed on the Project, or Subcontractor fails to continue to perform the Work without interruption or delay during a strike, picket, walkout, or other work stoppage or slowdown caused by a labor dispute, Contractor may, at its option, terminate Subcontractor's right to proceed with Work for default in accordance with Section 12.1 or employ workmen to perform the affected Work and back charge Subcontractor the cost thereof.

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

4.1.36. The following shall apply to the Subcontractor and its sub-subcontractors at whatever tier:

4.1.37.1. No individual independent contractors shall be employed by the Subcontractor on the Project. All subcontractors shall be incorporated entities.

4.1.37.2. All subcontractors shall abide by all relevant state and federal laws and regulations with regard to their work on the Project including, but not limited to, those laws and regulations relating to:

- a. The employment eligibility of all Subcontractor employees. Subcontractor shall acquire, assess, and maintain I-9 forms of all employees and take reasonable measures to ensure that its Project employees are eligible to work lawfully in the United States;
- b. Proof of Worker’s Compensation insurance coverage for all individuals working on the jobsite for the duration of Subcontractor’s work on the Project.

4.1.37.3. All subcontractors shall:

- a. Maintain a weekly record of the hours worked per day by their employees who work on the project;
- b. Make payments to unemployment insurance based on the earnings of all employees;
- c. Pay Project employees by check;
- d. Deduct from employee paychecks those withholdings required by state and federal law;
- e. Pay overtime at one and one half their regular wage rate to employees who are not exempt from the overtime requirements of the wage and hour laws for all hours worked over 40 hours in a workweek.

4.1.37.4. All subcontractors shall be registered to do business in the state in which the Project is located.

4.1.37.5. The Subcontractor shall defend, indemnify, and hold the Contractor harmless against any liability, fines and damages it may incur as a result of the failure of the Subcontractor or any of its Sub-subcontractors of any tier to comply with the provisions of this **Paragraph 4.1.37**. The Subcontractor shall provide verification of compliance with the foregoing obligations by submitting to the Contractor and/or the Owner, when requested to do so, certified payroll records providing the name, address, dates and hours worked by all tradespeople performing any jobsite work for the Subcontractor on the Project as well as proof of the Subcontractor’s compliance with all requirements set forth above.

4.1.17.6. Failure to provide proof of compliance with the requirements set forth above immediately upon request by the Contractor or to comply with any of these provisions shall constitute an event of default, and the Subcontractor shall be subject to any and all rights and remedies available to the Contractor pursuant to this Subcontract, including but not limited to any right of termination.

4.1.37. The Subcontractor shall bear the risk of loss or damage from any cause whatsoever to machinery, tools, equipment, building supplies or materials, temporary structures and any equipment of like nature used or to be used by the Subcontractor, its agents, suppliers and/or Sub-subcontractors, or its or their employees in the performance of the Subcontract.

4.1.38. The Subcontractor shall communicate solely with the Contractor concerning the Project, and shall not have direct verbal or written communication with the Architect, the Architect's consultants or the Owner absent prior written approval of the Contractor. The parties agree that this **subparagraph 4.1.38** is a material condition of the Subcontract.

4.2 LAWS, PERMITS, FEES AND NOTICES

4.2.1. The Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

4.2.2. The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract, including, but not limited to, those laws set forth in Articles 4.1.2 and 4.1.15, above.

4.3 SAFETY PRECAUTIONS AND PROCEDURES

4.3.1. The Subcontractor shall be primarily responsible for the safety of its own employees and its sub-subcontractor's employees. The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, ordinances, rules, regulations and orders of public authorities for the Safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall immediately (and no later than 24 hours) report to the Contractor an injury to an employee or agent of the Subcontractor which occurs at the site.

4.3.1.1. The Subcontractor shall at all times comply with all federal, state and local rules and regulations pertaining to safety and/or the maintenance of a safe worksite. The Subcontractor shall familiarize its supervisory employees with the Contractor's general safety program for the Work. Copies of the Contractor's written safety program shall be available for review at all times by the Subcontractor at the jobsite and at the Contractor's home office. The Subcontractor shall designate in writing at the start of the project its competent on-site safety representative.

4.3.2. If hazardous substances, of a type of use of which an employer is required by law to notify its employees, are being used or to be used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to use of such substance by any employees on the site, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

4.3.3. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor.

4.4 CLEANING UP

4.4.1. The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors.

4.4.2. Clean-Up Crews. Contractor reserves the right, upon twenty-four (24) hours written notice to all responsible subcontractors, to clean-up one or more areas of the Project site and remove unidentifiable construction debris, waste materials and rubbish from the area. Contractor shall back charge the costs incurred for this work on a pro-rata basis to each subcontractor working in the affected area.

4.4.3. If the Subcontractor fails to clean up as provided in the Contract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

4.5 WARRANTY

4.5.1. The Subcontractor shall strictly comply with all warranty requirements of the Contract Documents applicable to the Work. In addition, the Subcontractor warrants to the Owner, Architect and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

4.6 INDEMNIFICATION

4.6.1. To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work caused, in whole or in part, by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this **Paragraph 4.6.**

4.6.2. In claims against any person or entity indemnified under this **Paragraph 4.6** by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under **Subparagraph 4.6.1** shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

4.6.3. To the fullest extent permitted by law, the Subcontractor agrees to indemnify Contractor from any and all costs, including attorney's fees, incurred by Contractor defending a claim by Owner or any other party to the dispute if such claim relates to or arises from Subcontractor's Work.

4.6.4. To the fullest extent permitted by law, the Subcontractor agrees to indemnify, defend, and hold harmless, the Owner, the Contractor, and the Contractor's surety (if any) from all liens, claims and demands, and all expenses incurred, including attorneys' fees and costs of defense with counsel acceptable to the Contractor, for or on account of or in any way arising from (a) the Work of the Subcontractor or others claiming by, through or under the Subcontractor, (b) for payment of any labor performed or material or equipment furnished in connection with improvements to real property or related to the Project, or (c) for any breach of contract by the Subcontractor or any sub-subcontractor and/or supplier and/or materialman of the Subcontractor. In addition, and at the Contractor's sole option and direction, the Subcontractor shall be obligated to obtain a bond discharging any such lien claim.

4.6.5. To the fullest extent permitted by law, the Subcontractor agrees to indemnify, defend, and hold harmless, the Owner, the Contractor, and the Contractor's surety (if any) from and against all disputes, claims, demands, fines, penalties, assessments, costs and expenses, including but not limited to attorney's fees and costs, arising from or attributable to any violation by Subcontractor, or anyone for whom Subcontractor is responsible, of any law or regulation applicable to the Work, including but not limited to sales tax, use tax or other tax laws or regulations, any employment, labor, immigration and safety laws and regulations, any building and environmental codes, and the regulating of any state safety agency and/or the federal Occupational Safety and Health Administration.

4.6.6. Subcontractor shall defend, indemnify and hold Contractor and Owner harmless from all claims, damages or losses, including reasonable attorneys' fees, arising out of or related to any errors or omissions in design or engineering services performed or provided by Subcontractor.

4.6.7. Subcontractor shall be responsible for any and all deductibles to the extent the insured loss was caused by the Subcontractor or anyone for whom the Subcontractor is responsible.

4.6.8. Counsel selected by Subcontractor to represent Contractor pursuant any indemnity or insurance obligation shall first be approved by Contractor, which approval shall not be unreasonably withheld.

4.6.9. Deductible in excess of \$25,000 must be declared at the time Subcontractor/Seller submits its bid and must be specifically approved by Contractor/Buyer prior to execution of the Subcontract/Purchase Order. Subcontractor/Seller shall be responsible for any loss arising out of coverage denial by its insurance carrier.

ARTICLE 5. CHANGES IN THE WORK

5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not

thereafter order materials or perform Work which would be inconsistent with the changes made by the Modifications to the Prime Contract.

5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted where applicable. Additional award of Subcontract Time and Subcontract Sum shall only be made upon a fully executed Change Order. The parties expressly acknowledge and represent that no communications or course of dealing between them by any person, whether written, oral, or otherwise, will alter this contractual requirement in any way. In this regard, and absent a fully executed Change Order, the Contractor may, in its sole discretion and at any time, rightfully and without prejudice or liability to the Contractor, reevaluate any previous acknowledgement of extra Work and/or agreement to award additional Subcontract Time or Subcontract Sum for the same. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Contract Documents, in accordance with the Change Estimate/Change Order Procedure set forth in Exhibit E, and within the time frame required by the Contract Documents and in no event greater than five (5) calendar days after Subcontractor knows or should have known of the claim or request for a change proposal. Failure to respond within such time period shall be deemed a waiver by the Subcontractor for any compensation or additional time associated with that claim or request for change proposal.

5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Contract Documents and in no event greater than five (5) days after Subcontractor knows or should have known of the claim. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract and in no event greater than five (5) days after Subcontractor knows or should have known of the claim. Failure of the Subcontractor to make such a claim timely shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

5.4 Any written request by the Subcontractor to the Contractor for an increase in the subcontract price shall be responded to by the Contractor within the time frames stated in M.G.L. c. 149, § 29(E)(d).

ARTICLE 6. DISPUTE RESOLUTION

6.1 Any controversy or claim between the Contractor and the Subcontractor arising out of or relating to the Subcontract, or the breach thereof, shall be settled according to the dispute resolution procedures in the Prime Contract.

6.2 The Subcontractor shall furnish all notices and information within the time required under the Prime Contract to enable the Contractor to assert a claim or defense of the Subcontractor as required by **paragraph 5.3** above.

6.3 For a dispute which involves the Subcontractor's work in whole or in part, the Subcontractor has the right to participate in the assertion or defense of claims related to such work in the dispute resolution procedure with the Owner and shall be bound by the outcome.

6.4 Completion of the dispute resolution procedure in the Prime Contract shall be a condition precedent to the right of the Subcontractor to commence or continue any legal action or other dispute resolution proceeding against the Contractor.

6.5 Notwithstanding the foregoing, and in consideration of \$100 paid to the Subcontractor, the receipt whereof is acknowledged as part of the Subcontract Sum, at the sole option of the Contractor, any controversy, dispute or claim between the Contractor and the Subcontractor related in any way to this Agreement or the Project may be determined by a separate action in court or by a separate arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then pertaining, whichever the Contractor may elect in its sole discretion. Any award rendered by the arbitrator or arbitrators shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction.

6.6 The Subcontractor agrees to continue performance of the Subcontract Work and shall proceed in accordance with the direction of the Contractor, under protest, in the event of a dispute or controversy. Failure to so proceed shall constitute a material breach of this Agreement, regardless of the ultimate decision on the dispute, it being understood and agreed that no controversy between the parties shall be deemed a basis to delay or suspend the Work, unless directed otherwise by the Contractor in writing.

6.7 The Subcontractor hereby agrees to indemnify the Contractor from any and all costs, including attorneys' fees, incurred by the Contractor defending a claim by the Owner or any other party to the dispute if such claim relates to or arises from the Work.

ARTICLE 7. TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

7.1 TERMINATION

7.1.1. Notwithstanding anything to the contrary set forth herein, should the Subcontractor at any time refuse or neglect to supply a sufficient number of properly skilled workmen or materials of the proper quantity and quality, or fail in any respect to prosecute its Work promptly and diligently for any reason, or fail to perform any of the obligations on its part herein contained, or cause by any act or omission the stoppage, impediment, obstruction, hindrance or delay of or interference with or damage to the Work, or the work of any other contractors or subcontractors on the Project, or fail in the performance of any of the terms and provisions of this Agreement or of the Contract Documents, or should the Owner and/or Architect determine that the Work or any portion thereof is not being performed in accordance with the requirements of the Contract Documents, or otherwise persistently or repeatedly fail or neglect to carry out the Work in accordance with the Subcontract or the Contract Documents or otherwise fail to perform in accordance with the Subcontract for any reason and fails within three (3) days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient and, in doing so shall be permitted to assume control of all or portions of the Subcontractor's Work and to provide any such labor or materials or both, enter upon the Project premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, all of which the Subcontractor hereby transfers, assigns and sets over to the Contractor for such purpose, and deduct the cost thereof from any money due or thereafter becoming due to the Subcontractor. In such event, neither the Subcontractor, nor any of its sureties or assignees shall be entitled to any further payments under or concerning the Subcontract unless and until (a) all Work is complete, (b) a full accounting can be rendered by the Contractor, (c) any sums can be determined to be due either the Contractor or the Subcontractor as a result of such accounting and arising from such termination and (d) the costs, liabilities and expenses incurred by or on behalf of the Contractor in exercising its rights under this subparagraph are less than the amounts earned by but unpaid to the Subcontractor. If the amount otherwise to be paid under this Subcontract shall be exceeded by the costs, liabilities and expenses incurred by or on behalf of the Contractor in exercising its rights under this subparagraph, then the Subcontractor and its sureties, if any, shall pay the difference to the Contractor. Such costs, liabilities and expenses shall be deemed to include not only the costs and expenses of completing the Work to the satisfaction of the Owner and/or the Architect and of performing and furnishing all labor, services, materials, equipment, and other items required therefor, but also any and all losses, damages, liabilities, costs and expenses, (including legal fees and disbursements incurred in connection with the Contractor's exercise of its rights under this paragraph and under Article 3, and incurred in connection with defending claims arising from the Subcontractor's defaults and in seeking recovery of all of the Contractor's costs and expenses from the Subcontractor and/or its sureties), and disbursements made, sustained, incurred or suffered by reason of or resulting from the Subcontractor's defaults. Should the Contractor take action by effectuating the provisions of this subparagraph, and should it subsequently be finally determined that a termination effectuated under this subparagraph was improper, such termination shall be treated as a termination for convenience pursuant to **subparagraph 7.1.2** hereunder and the Subcontractor shall be limited, as its exclusive remedy, solely to the amounts recoverable under said **subparagraph 7.1.2**.

7.1.2 The Contractor may at any time terminate the Subcontract for the convenience of the Contractor for any reason without any default under the Contract Documents. In the event of such a termination for convenience and notwithstanding any other provision of the Subcontract to the contrary, provided the Subcontractor is not in default, the

Subcontractor shall receive, as its entire and sole compensation, its actual, necessary and reasonable costs of performing the Work to date of termination, as determined by audit of the Subcontractor's records, plus a reasonable pro-rata mark-up for overhead and profit, but in no event shall such amount paid and payable hereby exceed the total Subcontract Sum prorated to the percent of completion. The Subcontractor shall make its books and records available at reasonable times and places for the Contractor's audit in the event this paragraph is invoked.

7.1.3 Upon receipt of written notice of termination under **7.1.1 or 7.1.2 above**, the Subcontractor shall cease operations as directed by the Contractor in the notice and take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work.

7.2 SUSPENSION

7.2.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Contractor may determine.

7.3 ASSIGNMENT

7.3.1 In the event of termination of the Prime Contract by the Owner, or at the election of the Contractor, upon written notice to the Subcontractor, the Contractor may assign this Subcontract to the removal or the Owner's designee, with the Owner's agreement, subject to the provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume the Contractor's rights and obligations under the Subcontract Documents, the Subcontractor shall thereafter be bound to the Owner as set forth in such written notice to the Subcontractor and in accordance with the terms and conditions of the Subcontract and the Subcontractor shall have no further recourse against the Contractor.

7.3.2 The Subcontractor shall not assign the Work without the written consent of the Contractor nor subcontract the whole of this Subcontract without the written consent of the Contractor, nor further subcontract portions of this Subcontract without written notification to the Contractor. The Subcontractor shall not assign, sell, or otherwise transfer in any manner the proceeds or receivables of this Subcontract without the prior written consent of the Contractor. A breach of this provision shall be deemed a material breach and default of the Subcontract and Contractor shall have the right to terminate Subcontractor for such breach.

ARTICLE 8. THE WORK OF THIS SUBCONTRACT

8.1 The Subcontractor shall execute that portion of the Work described in the Scope of Work Rider Exhibit A and as shown in the Contract Documents identified in the Contract Document Rider Exhibit B, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent, if any, specifically indicated in the Subcontract Documents to be the responsibility of others.

ARTICLE 9. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

9.1 The Subcontractor agrees and acknowledges that the Contractor has the right, in its sole discretion, to make revisions, changes, adjustments, and sequencing alternations to the Project schedule from time to time as necessary and the Subcontractor expressly agrees and acknowledges that it shall be bound to, and abide by, such revisions, changes, adjustments, and sequencing alterations to the Project schedule, and that it will adjust and conform its work accordingly, at its cost, to meet all completion dates of this Subcontract as set forth herein. Upon notice from the Contractor, the Subcontractor agrees to commence, proceed with and complete the Work promptly and diligently under the direction of the Contractor, in compliance with all job schedules of the Contractor as the same may be amended from time to time. Time is of the essence of this Subcontract. No extension of time will be valid without the Contractor's written consent. The Subcontractor may be held liable for all damages, costs, losses and expenses resulting directly or consequentially from its failure to meet required time limits.

ARTICLE 10. SUBCONTRACT SUM

10.1 The Contractor shall pay the Subcontractor in current funds, when and if required herein, for performance of the Subcontract the Subcontract Sum stated in the Definitions section above.

10.2 Unit Prices, Alternates and Mark-Up on changes, if any, are as stated in the Definitions section above only.

ARTICLE 11. PROGRESS PAYMENTS

11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor in accordance with the Application for Payment Procedure set forth in Exhibit F, corresponding to applications for payment submitted by the Contractor to the Owner, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents.

11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month. The Subcontractor represents and warrants with each requisition that all applicable payroll taxes and other withholding assessments have been paid, and that all employees have been properly classified for workers' compensation insurance purposes, and that the appropriate premiums have been paid to its insurance carriers. The Subcontractor is an independent contractor and the Contractor shall have no obligation with respect to payroll taxes, worker's compensation insurance, or other assessments or withholdings.

11.3 Subcontractor shall submit to Contractor its draft (pencil) monthly application for payment on the 25th day of the month unless Contractor or the Contract Documents specify otherwise. Late or incomplete applications will not be processed until the following month. The draft (pencil) monthly application for payment shall be for review only and shall not be for approval. Subcontractor shall submit to Contractor each monthly final application for payment on the 29th day of the month. Any application for payment submitted prior to the 29th day of the month by the Subcontractor shall be deemed denied in good faith by Contractor. Provided an application for payment is received by the Contractor as stated above, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Architect or Owner. In the event M.G.L. c. 149, § 29E applies to this subcontract: (1) Contractor shall approve or reject Subcontractor's final monthly application for payment within twenty-two (22) calendar days; (2) in the event Contractor does not approve or reject the application for payment, then such is deemed approved but subject to Contractor's right to reject same, in whole or in part, by the time payment is due; and (3) Contractor shall make payment for such application for payment to Subcontractor for approved amounts within forty-five (45) days of approval thereof, subject to the condition precedent of Contractor's receipt of payment from the Owner as set forth below. Receipt of progress payment by the Contractor from the Owner shall in each instance be an express condition precedent to the right of the Subcontractor to receive payment. The Subcontractor shall not be entitled to progress payments from the Contractor, unless, until and then only to the extent such payment has been received by the Contractor from the Owner. The Subcontractor, on behalf of itself and its assignees, sureties and agents, if any, agrees that the terms of this **subparagraph 11.3** shall inure to the benefit of, and be enforceable by, any of the Contractor's surety or sureties and assignees and that such terms shall be deemed to be incorporated into any payment, labor and material or other similar bond issued by or for the Contractor by any surety or sureties regarding the Project. In its sole discretion, the Contractor may cause the proceeds of any payment payable hereunder to the Subcontractor to be applied to the payment of any indebtedness owed by the Subcontractor to any party who has performed Work or supplied materials or equipment used in or in connection with the performance of this Subcontract, either directly or by means of checks payable jointly to the Subcontractor and such party, provided such work or such materials or equipment have been included in any Subcontractor's application for payment previously submitted hereunder and approved for payment under the Prime Contract, unless the Subcontractor provides credible documentary evidence that it has previously paid such party therefor.

11.3.1 The Subcontractor agrees that any monies it shall receive in payment for Work performed under this Subcontract shall be used to discharge its financial obligations to those who furnish labor, materials and equipment to the Project. Upon payment by the Contractor, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. If a lien is filed against the property on which the Project is located or a payment bond claim is made against the Contractor's bond or statutory lien bond in relation to the Subcontractor's Work, then the Subcontractor agrees to have same discharged or satisfied within fifteen (15) days. This obligation arises under the Subcontractor's more general duty to indemnify as set forth in **Paragraph 4.6.3**, above.

11.3.2 In the event M.G.L. c. 149, § 29E applies to this subcontract, the following language shall take precedence over any language contained hereto to the extent such are in conflict:

Contractor's receipt of progress and/or final payment from the Owner shall be an express condition precedent to the right of the Subcontractor to receive payment from the Contractor and to the Contractor's obligation to make payment to the Subcontractor under the following two instances:

(1) to the extent of amounts not received from the third person because the person performing the construction failed to perform under its contract and failed to cure the non-performance within the time required by the contract after receipt of written notice as provided in the contract or, in the case of contract lacking a cure and notice provision, failed to cure the non-performance within 14 days after receipt of written notice of the failure to perform; or

(2) to the extent of amounts not received from the third person because the third person is insolvent or becomes insolvent within 90 days after the date of submission of the requisition for which payment is sought; provided, however, that the person seeking to enforce the payment condition (i) filed a notice of contract under chapter 254 and in the case of a person having no direct contractual relationship with the original contractor, also sent a notice of identification within the time required under said chapter 254, prior to the person's submission of the first application for payment after commencement of performance at the project site and did not dissolve the lien created by the filing of such notice of contract; and (ii) within the time periods allowed by said chapter 254 files a statement of amount due and commenced or commences a civil action to enforce the lien; and (iii) pursues all reasonable legal remedies to obtain payment from the person with whom the person had a direct contract unless and until there is a reasonable likelihood the action shall not result in obtaining payment.

11.4 If an application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

11.5 Each application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with **paragraph 4.1.26** above.

11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows:

11.7.1. Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less Retainage;

11.7.2. Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor and Owner, suitably stored off the site at a location agreed upon in writing, less Retainage;

11.7.3. Subtract the aggregate of previous payments made by the Contractor; and

11.7.4. Subtract amounts, if any, calculated under Subparagraph **11.7.1 or 11.7.2** which are related to Work for which the Architect or Owner has withheld or nullified, in whole or in part, a certificate of payment for a cause which is the fault of the Subcontractor.

11.8 SUBSTANTIAL COMPLETION

11.8.1. When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make application for payment for such Work, subject to any other requirements of the Prime Contract. "Substantial Completion" hereunder shall be as defined in and controlled by the Prime Contract.

ARTICLE 12. FINAL PAYMENT

12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum (including Retainage withheld pursuant to **subparagraph 11.7**), shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Contract Documents, when all close-out requirements have been fulfilled, including but not limited to record drawings, as-builts, O&M manuals, punch list items complete, commissioning, start-up, etc. (to the extent applicable to the Subcontractor's Work), and the Contractor has received payment from the Owner. Receipt of final payment by the Contractor from the Owner shall in each instance be an express condition precedent to the right of the Subcontractor to receive payment from the Contractor. The Subcontractor shall not be entitled to final payment from the Contractor unless, until and then only to the extent such payment has been received by the Contractor from the Owner. The Subcontractor, on behalf of itself and its assignees, sureties and agents, if any, agrees that the terms of this subparagraph 12.1 shall inure to the benefit of, and be enforceable by, any of the Contractor's surety or sureties and assignees and that such terms shall be deemed to be incorporated into any payment, labor and material or other similar bond issued by or for the Contractor by any surety or sureties regarding the Project. In its sole discretion, the Contractor may cause the proceeds of any payment payable hereunder to the Subcontractor to be applied to the payment of any indebtedness owed by the Subcontractor to any party who has performed Work or supplied materials or equipment used in or in connection with the performance of this Subcontract, either directly or by means of checks payable jointly to the Subcontractor and such party, provided such work or such materials or equipment have been included in any Subcontractor's application for payment previously submitted hereunder and approved for payment under the Prime Contract, unless the Subcontractor provides credible documentary evidence that it has previously paid such party therefor.

12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied, and all lien waivers and other close-out documentation required by the Prime Contract have been delivered.

12.3 If this Subcontract is subject to M.G.L. c. 149, § 29F, then Subcontractor's Applications for Payment for retainage shall be accompanied by a list identifying all punch list items, stating that they are complete, and also contain a certification that the punch list completion list is accurate and submitted in good faith.

ARTICLE 13. INSURANCE AND BONDS

13.1 The Subcontractor shall purchase and maintain insurance coverage and limits of liability as shall be on stated in the Insurance Rider – Exhibit D.

13.2 Coverages shall be occurrence based and shall be maintained without interruption from date of commencement of the Subcontractor's Work until date of final payment through to termination of any coverage required to be maintained after final payment to the Subcontractor.

13.2.1. Any insurance policy obtained by the Subcontractor to fulfill the insurance requirements of the Subcontract shall name the Contractor as an "additional insured" and provide that such insurance shall be deemed primary insurance to any similar insurance the Contractor may obtain for its own benefit, which shall be excess or secondary but not contributing insurance. Each such policy obtained by the Subcontractor shall provide that the insurer shall defend any suit against the Contractor, its officers, agents, or employees even if such suit is frivolous or fraudulent, so long as such suit results from work of the Subcontractor.

13.3 The Subcontractor will furnish the Contractor with confirming Certificates of Insurance using ISO Additional Insured Endorsement CG 20 10 (11 85) or CG 2010 (10 93) **and** CG 20 37 (10 01) or an endorsement providing equivalent coverage to the additional insureds, and shall also include a copy of the Additional Insured Endorsement that is actually part of the Subcontractor's Commercial General Liability Policy prior to performing any work at the Project Site. Each Certificate shall confirm that the insurance will not be cancelled, materially altered or any reduction of any limit with less than 30 days written notice by Registered Mail to the Contractor. If requested by the Contractor, the Subcontractor will furnish originals or certified copies of insurance policies including all endorsements required to provide stated coverage.

13.4 To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Contractor, Owner, Architect, Architect's consultants, and agents and employees of any of them from and against any claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from Subcontractor's failure to procure and maintain the insurance required hereunder.

13.5 PERFORMANCE BOND, PAYMENT BOND AND LIEN BOND

13.5.1. At the Contractor's sole option, the Subcontractor shall be required to furnish separate performance bond, payment bond, and lien bond to secure the Subcontractor's obligations under this Agreement. See Exhibit A – Scope of Work (if required). Each of the bonds shall be in the amount of this Agreement in a form and issued by a (current) Treasury listed Surety with an AM Best rating of A- or higher. In the event the Subcontractor shall fail to promptly provide such requested bonds, the Contractor may terminate this Agreement and re-let the work to another subcontractor and all Contractor costs and expenses incurred thereby shall be paid by the Subcontractor, including any price differential.

13.6 WAIVERS OF SUBROGATION

13.6.1. If required by the terms of the Prime Contract, the Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate written agreements, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14. TEMPORARY FACILITIES AND WORKING CONDITIONS

14.1 The Subcontractor shall furnish those temporary facilities, equipment and services as stated in Exhibit A - Scope of Work. The Subcontractor is responsible for its own hoisting, rigging, staging, scaffolding, storage, temporary office, and other, similar, activities reasonable and necessary to perform its Work.

14.2 The Subcontractor is responsible for verifying the dimensions and elevations at the site by field measurement prior to making submittals or shop drawings, ordering materials or in any way commencing to perform work.

14.3 The Subcontractor shall notify the Contractor in writing of any deficiencies in any work at the site prior to the commencement of the Subcontract Work. Any unreported deficiencies shall be deemed accepted by the Subcontractor and such areas become the responsibility of the Subcontractor.

ARTICLE 15. MISCELLANEOUS PROVISIONS

15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

15.2 Payments due and unpaid under this Subcontract shall bear interest after a thirty (30) day grace period at the lesser of the rate set forth in the Prime Contract for interest on late payments due to the Contractor from the Owner or the then applicable base lending rate of Bank of America or its successor.

15.3 If a mutual waiver of consequential damages is included in the Prime Contract, then the Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with **Article 7**, but only to the extent waived in the Prime Contract.

15.4 Subcontractor understands and agrees that it shall not be entitled to any payment or reimbursement for costs, compensation, or damages for any delay, obstruction, hindrance or interference to performing the Work; except to

the extent that the Contractor has actually recovered corresponding payment from the Owner under the Contract Documents for such delay, obstruction, hindrance or interference, and then, and only then, to the extent of the amount, if any, which the Contractor on behalf of the Subcontractor, actually receives from the Owner on account of such delay, obstruction, hindrance or interference.

15.5 This Subcontract shall be governed by and construed in accordance with the laws of the state governing the Prime Contract and the Conflict of Laws provisions of or applicable to the Prime Contract shall control in all instances.

15.6 The Subcontractor agrees to employ labor, furnish and provide materials, and make work assignments in a manner consistent with the requirements of any collective bargaining agreements to which the Contractor is signatory, as determined by the Contractor, and to work in harmony with all other labor on the Project. With respect to trades to which the Contractor is not signatory, it is understood by the Subcontractor that subcontracts will be awarded by the Contractor and labor will be employed on the Project without discrimination as to whether employees, agents, suppliers and/or subcontractors of the Contractor or any other subcontractor, including those that may be employed by the Owner of the Project, are members or non-members of any labor or collective bargaining organization, and the Subcontractor accepts the Subcontract with this understanding.

A. There shall be no manifestations on the Project of any dispute between any labor organization and the Subcontractor. The Subcontractor agrees to employ personnel, employees, agents, mechanics, suppliers and sub-subcontractors who will perform the Work whether or not other employees, agents or suppliers on the Project are members of any labor or collective bargaining organization.

B. The Subcontractor agrees not to participate in or permit any cessation of work which may occur as a result of any labor dispute, regardless of whether said labor dispute involves the Subcontractor or any other subcontractor or employer on the Project. Should there be a work stoppage caused by a strike, picketing inability to obtain supplies, material or equipment, boycott or any voluntary or involuntary cessation of work, by employees of the Subcontractor, its agents, suppliers and/or sub-subcontractors, which in the sole judgment of the Contractor will cause or is likely to cause unreasonable delay in the progress of construction, then the Contractor shall have the right to declare the Subcontractor in default of this Subcontract, and may invoke the remedies and/or termination provisions set forth herein.

C. The Subcontractor and all its sub-subcontractors shall provide health insurance for their trades people employed on the Project.

D. Should a Reserve Gate System be established at the jobsite, the Subcontractor, all its sub-subcontractors and, their employees, visitors and suppliers shall abide by the requirements of that Gate system.

15.7 If the Contractor reasonably believes that the performance by the Subcontractor of the Work to be performed hereunder has been or will be endangered because the Subcontractor will fail or has failed to pay for labor, fringes, materials, sub-subcontractor taxes, or any other contractual obligations of the Subcontractor, the Contractor shall have the right, at its election, but not the obligation, to make payment on account of the Subcontract Sum by means of checks payable jointly to the Subcontractor and to the person, firm, corporation, trustee, union, governmental authority, or other entity to whom money is due from the Subcontractor. The exercise of such right by the Contractor on any one occasion shall not obligate the Contractor to execute such right and any other occasion; nor shall anything herein constitute or be deemed a guarantee or assumption by the Contractor of any obligation of the Subcontractor. Prior to submitting its first estimate for payment, Subcontractor shall provide Contractor with a sworn statement identifying the name, address and telephone number of each known sub-subcontractor.

15.8 Should one or more other subcontracts, now or hereinafter, exist between the parties hereto or involving any affiliated entity or either of the parties hereto, concerning this or any other construction project, then a breach by the Subcontractor (or affiliated entity) of any such other subcontract, may, at the option of the Contractor (or affiliated entity), be considered a breach of all subcontracts and, in that event, the Contractor (or affiliated entity) may terminate any or all of such subcontracts and/or may withhold monies due or to become due on any such subcontracts, and apply same towards payment of any claim or loss, liability, damage or expense suffered by the Contractor (or

affiliated entity) on that or any other such subcontracts. As used herein, the term "affiliated entity" shall include, without limitation, (i) any corporation which controls, is controlled by, or is under common management with either Party hereto or 25% of whose stock is owned by any person who owns 25% of the stock of either party hereto and (ii) any general or limited partnership or joint venture of which either party hereto (or affiliated entity) is a partner or a member.

15.9 Provided the Contractor shall not be in material default due to non-payment, the Subcontractor shall defend, indemnify and hold the Contractor harmless from any and all costs, losses, damages, claims, liens or actions for services, labor and/or material brought by any other party furnishing same by, through, or under the Subcontractor. In addition, at the Contractor's option and direction, the Subcontractor shall be obligated to obtain a bond discharging any lien claim asserted by any party claiming by, through, or under the Subcontractor, in accordance with applicable law.

15.10 All previous bids, orders, proposals, letters, oral or written promises and understandings relating to the subject matter to this Subcontract are hereby declared to be null and void. This Subcontract is complete and shall not be interpreted by any reference to any previous bid, letter, proposal, document or understanding, written or oral, or other document or agreement except as specifically provided in this Subcontract.

15.11 The Subcontractor acknowledges that the Contractor's surety or sureties, and any of its assignees, if any, shall have the benefit of each and every contractual, common law, and statutory defense of the Contractor hereunder.

15.12 **Equal Employment Opportunity:** The Subcontractor agrees that with respect to the performance of the Work:

A. The Subcontractor shall not discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, disability, sexual orientation, veterans' status, or age, and the Subcontractor shall take affirmative action to insure that applicants for employment are employed and the employees are treated during employment without regard to their race, religion, color, gender, national origin, disability, sexual orientation, veterans' status, or age. Such affirmative action to be taken by the Subcontractor shall include, but not be limited, to actions with respect to the following: employment upgrading, demotion and transfer, recruitment and recruitment advertising, layoff and termination, rates of pay and other forms of compensation, and selection for training, including apprenticeship. The Subcontractor shall post in conspicuous places available to employees and applicants for employment notices.

B. The Subcontractor shall in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor state that all qualified applicants will receive consideration for employment without regard to race, religion, color, gender, national origin, disability, sexual orientation, veterans' status, or age.

C. Sexual harassment or other unlawful harassment will not be tolerated. The failure of the Subcontractor to maintain control over its employees in this regard shall be grounds for termination of this Subcontract in accordance with **paragraph 7.1.1** above.

The Subcontractor shall defend, indemnify, and hold harmless the Contractor and Owner against any liability, damage, claim, or loss (including, but not limited to, such costs as attorney fees) as a result of the Subcontractor's or its sub-subcontractors' failure to comply with this **Paragraph 15.12**.

15.13 Design Delegation: Whenever the Contract Documents specifically require the Subcontractor to furnish, as part of its Work, design or engineering services or certifications of any kind, the Subcontractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other Submittals prepared by such professional. The Professional shall be registered in the state of the project location. The Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of such services. The Subcontractor shall furnish a certificate of insurance from each design professional certifying to professional liability insurance coverage for such design profession in an amount not less than \$1.0 million or such greater amount as required by the Contract Documents. The Subcontractor shall defend, indemnify and hold the Contractor harmless from all claims, damages or losses, including reasonable attorneys fees, arising out of or related to any errors or omissions in design, or to any claim for infringement or misappropriation of any other person's intellectual property arising out of such design, in addition to any other claims for which indemnification is required hereunder.

15.14 The Subcontractor shall not sub-subcontract any work hereunder without written notice to the Contractor. The Contractor shall have the right to approve all sub-subcontractors.

15.15 Confidentiality and Non-Solicitation:

A. Confidential Information: During the course and scope of this Subcontract, the Subcontractor will receive from the Contractor "Confidential Information" for the Subcontractor's use in performing its Work. As used herein the term "Confidential Information" means any information related to costs, site acquisition, design, plans and specifications, permitting and regulatory compliance, opening dates, profit margins, business plans, marketing, sales, service, product sources, business methods, and technical information related to the Work, including information which is the property of the Owner that has been furnished to the Contractor for its use in performing the Work, and any other information which would give any third party an opportunity to obtain an advantage over competitors who do not know such information, including but not limited to trade secrets of the Owner.

B. Restrictions on Use of Confidential Information: The Subcontractor shall not, either during the term of this Agreement and for a period of at least five (5) years after the expiration of this Agreement, except and as required in the conduct of the Subcontractor's duties hereunder and as authorized by the Contractor in writing, use, publish, disclose, appropriate, or communicate, directly or indirectly, any of the Confidential Information.

15.15.1. Non-Solicitation: The Subcontractor agrees that during the term of this Agreement and for a period of at least two (2) years after the expiration of this Agreement, it shall not, either directly or indirectly, either for itself or for any other person, firm, or corporation, call upon, recruit, solicit, hire, or otherwise engage as an employee, consultant, or independent contractor any of the employees of the Contractor nor shall it induce or cause such persons to terminate employment with the Contractor for the purpose of joining, associating or being employed by the Subcontractor. In the event of a breach of this covenant, and in addition to any other remedy available hereunder or at law, the Subcontractor shall pay to the Contractor as liquidated damages a sum equal to two times the annual salary of any employee of the Contractor engaged by the Subcontractor in violation of this Agreement.

15.15.2. Enforcement: The parties agree that each of the foregoing confidentiality and non-solicitation covenants are important, material and confidential, and gravely affect the effective and successful conduct of the business of the Contractor and affect its reputation and good will. The parties further agree that any breach of the provisions of these covenants is and shall be a material breach of this Subcontract, and that in the event of such breach the Contractor shall be irreparably harmed and no remedy at law shall be adequate to compensate the Contractor for its losses. Therefore, the Subcontractor agrees that these covenants shall be enforced by injunctive relief and that the Subcontractor shall pay the Contractor all costs and attorneys' fees incurred by the Contractor in any legal action or proceeding.

15.15.3. The Subcontractor shall be subject to any and all audit, disclosure, accounting, record keeping, inspection and similar requirements of the Contract Documents, particularly any such requirements imposed by the Prime Contract.

ARTICLE 16. DISCLAIMER REGARDING USE OF ELECTRONIC FILES

16.1 Use of Electronic Files. As a convenience to the Subcontractor, the Contractor may provide electronic files, including drawings, specification sections, and other documents, in electronic format to assist the Subcontractor in preparing shop drawings and other submittals required for the Work and for preparing as-built or record drawings. If so provided, such electronic files shall be used only as a supplement to previously issued paper Contract Documents. The furnishing of electronic files does not relieve the Subcontractor of its obligation to fully comply with the Contract Documents, including and without limitation, the need to check, confirm and coordinate all dimensions and details, take field measurements, verify field conditions and coordinate the Subcontractor's Work with that of other trades. The cost, if any, for the use of such files, shall be incurred the by the Subcontractor.

16.2 No License. By providing electronic files, the Contractor does not convey any license or right, including copyright, in the original documents, nor any right to prepare derivative works.

16.3 Indemnity. The use or re-use of any electronic files by the Subcontractor or on the Subcontractor’s behalf shall be at the Subcontractor’s sole risk and without liability to the Contractor. The Subcontractor shall indemnify, defend and hold the Contractor, its clients, consultants and employees harmless against all damages, liabilities, losses or expenses arising out of or relating to the Subcontractor’s use of the electronic files furnished through the Contractor.

16.4 Disclaimer. Electronic files furnished pursuant to this Article are not Contract Documents. No representation is made by the Contractor as to the accuracy, completeness, or condition of the electronic files that may be furnished pursuant to this Article 16, and differences may exist between these files and the paper Contract Documents due to corruption, viruses, or other anomalies. In the event of a discrepancy, the hard copies of Contract Documents shall govern. The Subcontractor accepts responsibility for any and all loss or damage arising from the copying, loading or use of such electronic data by the Subcontractor and agrees to waive any such claims against the Contractor.

16.5 Use by Others. If during the course of performing the Work the Subcontractor transfers electronic files furnished pursuant to this Article 16 to a third-party, the Subcontractor agrees to obtain written confirmation that such third-party agrees to the terms and conditions set forth in this Article 16 prior to transfer thereof and as a condition of their use.

This Agreement is entered into and executed as a sealed instrument of the day and year first written above.

Contractor
TOCCI BUILDING CORPORATION

Subcontractor
SUBCONTRACTOR COMPANY

By: Name

By: Name

Its: Information

Its:Information