

# ATTACHMENT I

## SUBCONTRACT GENERAL CONDITIONS



1. The Contractor employs the Subcontractor as an independent contractor, to perform the Work described in the Agreement under the general direction of the Contractor and in accordance with the Agreement and the Contract Documents. The Subcontractor binds itself to the Contractor under this Agreement in the same manner as the Contractor is bound to the Owner under the Contract Documents, except where provisions are in conflict with the terms of this Agreement, in which case the terms of this Agreement shall govern. It shall be the duty of the Subcontractor to notify the Contractor within three (3) days of discovery of any conflicts or omissions in the Contract Documents. The Subcontractor shall be responsible for any costs or delays due to a failure to so notify the Contractor.

2. The Subcontractor expressly agrees that TIME IS OF THE ESSENCE in this Agreement. Both the Contractor and the Subcontractor shall be bound by the Schedule of Work. The Subcontractor shall provide the Contractor with any requested scheduling information for the Subcontractor's Work. The Contractor shall prepare the Schedule of Work and revise such schedule as the Work progresses. The Subcontractor recognizes that changes will be made in the Schedule of Work and agrees to comply with such changes subject to a reservation of rights arising hereunder. The Contractor shall have the right to decide the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of the Subcontractor's Work. The Subcontractor shall commence its work within three (3) days of notice to proceed from the Contractor and if such work is interrupted for any reason the Subcontractor shall resume such work within two (2) working days from the Contractor's notice to do so.

3. Should the Subcontractor fail in any respect to prosecute the Work with promptness and diligence and in such manner so as not to delay the Contractor of the progress of the Project, or if the progress of the Work is such that in the Contractor's sole opinion the completion of the Work or any part thereof within the time specified is doubtful and the Contractor gives the Subcontractor written notice thereof, the Subcontractor agrees to take all action necessary to ensure the completion of the Work or any part thereof within the time specified, including but not limited to any or all of the following: increase construction manpower in critical quantities and crafts; increase the number of working hours per shift; increase the number of shifts per working day; increase the number of working days per week; increase the amount of construction equipment; or, perform any combination of the foregoing actions. The Subcontractor agrees that it shall have no claim for any adjustment in the Subcontract price or reimbursement because of extra expenses occasioned by compliance with this section. Compliance with this section shall not release or relieve the Subcontractor from any other obligation or liability assumed under this Subcontract, nor shall such compliance prevent or stop the Contractor from enforcing any other right or collecting any damages or costs to which it is entitled under this Agreement.

4. The Subcontractor shall designate one or more persons who shall be the authorized Subcontractor's representative(s) a) on-site and b) off-site. The Subcontractor shall cooperate with the Contractor and all others whose work may interfere with the Subcontractor's Work, specifically note and immediately advise the Contractor of any such unreasonable interference with the Subcontractor's Work, and participate in the preparation of coordination drawings and/or work schedules in areas of congestion. Before proceeding with any item of Work, the Subcontractor shall inspect and check all work previously completed by the Contractor or others to ensure that it is ready to receive the Subcontractor's Work. Unless the Subcontractor reports in writing to the Contractor any defects or discrepancies, commencement of the Subcontractor's Work shall constitute acceptance of that previous work. The Subcontractor shall notify the Contractor when portions of the Subcontractor's Work are ready for inspection. The Subcontractor shall at all times furnish the Owner, the Contractor and their representatives adequate facilities for inspecting materials at the site or any place where materials under this Agreement may be in the course of preparation, process, manufacture or treatment. The Subcontractor shall furnish to the Contractor, in such detail and as often as required, full reports of the progress of the Subcontractor's Work irrespective of the location of such Work.

5. The Subcontractor agrees to take all necessary safety and other precautions, at all times, to prepare for and perform the Work in a safe manner and to protect persons from illness or injury and property from damage arising out of the performance of the Work. The Subcontractor agrees and is responsible to ensure that its Sub-subcontractors and Suppliers adhere to these requirements. The Subcontractor shall take all necessary safety precautions pertaining to its Work and the conduct thereof,

including but not limited to, compliance with all applicable laws, ordinances, rules, regulations and orders issued by a public authority, whether Federal, State, local or other having jurisdiction over the Work, and any safety measures requested by Contractor. The Subcontractor shall, at all times, be responsible for providing a safe work site and be responsible for the safety of all personnel, equipment, and materials within the Subcontractor's care, custody, or control. The Subcontractor shall promptly provide the Contractor with written notice of any safety hazard or violation found anywhere on or adjacent to the construction site. The Subcontractor agrees that its safety responsibilities include, but are not limited to the following:

- a) The Subcontractor shall provide all safety equipment required to safely perform its Work.
- b) When requested by the Contractor or required by a governing authority, the Subcontractor shall develop a site specific safety plan (hereinafter "Safety Plan") that identifies all anticipated hazards that will most likely be encountered in all phases of its Work on the project and which identifies the specific means that will be used to address those hazards. The Safety Plan shall be submitted to the Contractor prior to the Subcontractor commencing work on the project site or at any off-site location not owned and under the exclusive control of the Subcontractor. The Safety Plan shall comply in all respects with the Safety and Health Act governing the location of the Project, all regulations promulgated thereunder, and all other applicable Federal, State, or local statutes, regulations, ordinances, or rules.
- c) The Subcontractor shall, prior to commencing its Work, have in place an Accident Prevention Program that complies in all respects with the Safety and Health Act governing the location of the Project and all regulations promulgated thereunder. As part of its Accident Prevention Program, the Subcontractor shall establish and enforce a disciplinary schedule for safety violations.
- d) The Subcontractor agrees to fully cooperate with the Contractor in the preparation and implementation of any job site safety plans or safety incentive or recognition programs for the Project. The Subcontractor agrees to cooperate fully with the Contractor in scheduling and ensuring attendance at safety meetings.
- e) The Subcontractor agrees to submit itself to and fully cooperate with periodic inspections, audits, assessments, reviews and/or training programs designed to ensure compliance with any applicable Safety Plan or Accident Prevention Program.
- f) When requested by the Contractor, the Subcontractor shall submit to Contractor, on a weekly basis, copies of all documentation maintained by Subcontractor pertaining to safety, implementation of its Safety Plan and Accident Prevention Program, as well as all documentation relating to the Subcontractor's compliance with any other job site safety plans applicable to its Work.
- g) The Subcontractor agrees to cooperate with the Contractor and comply with all miscellaneous requests concerning safety including, but not limited to, Material Safety Data Sheets, Haz-Mat Awareness Program, and Assured Grounding Program compliance.
- h) The Subcontractor acknowledges the importance of compliance with the requirements of this Agreement and agrees that no action or inaction of the Contractor shall be deemed to cause a waiver of the requirements of this Article.

**6.** The Subcontractor shall have an alcohol and substance abuse policy covering its employees and its Sub-subcontractor's employees which meets or exceeds the following criteria: (1) Pre-employment testing of all employees, or proof of a valid test within the past six months; (2) Mandatory post-accident testing; (3) Allowance for testing based on reasonable suspicion, and; (4) Follow-up testing, disciplinary action up to and including termination, or mandatory enrollment in a recommended treatment program. The Subcontractor agrees to ensure that its employees and Sub-subcontractor employees have proof of a negative drug and alcohol test prior to reporting for work at the job site, and to provide such proof upon request.

**7.** The Subcontractor shall follow the Contractor's clean-up directions, keep the building and premises free from debris resulting from the Subcontractor's Work, and broom clean each work area prior to discontinuing Work in such area. If the Subcontractor fails to undertake clean-up duties within 24 hours after notice of non-compliance, the Contractor may implement cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due the Subcontractor. The Subcontractor shall participate in any general site cleanup that may be organized by the Contractor; notwithstanding the above notice provision, any costs resulting from the Subcontractor's failure to participate may be deducted from any amounts due or to become due the Subcontractor.

**8.** The Subcontractor shall take all necessary precautions to properly protect the Subcontractor's Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may so remedy and deduct the cost thereof from any amounts due or to become due the Subcontractor.

**9.** The Subcontractor shall comply with all license and registration laws in the jurisdiction(s) where the Work is to be performed, and shall provide the Subcontractor's license and/or registration number(s) to the Contractor immediately upon request. The Subcontractor shall give adequate notices to authorities pertaining to the Subcontractor's Work and secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary to complete the Subcontractor's Work in accordance with the Contract Documents. The Subcontractor agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances and regulations applicable to the Subcontractor's Work, including, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other laws with which the Contractor must comply according to the Contract Documents. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost, and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply therewith, including, but not limited to, any fines, penalties or corrective measures.

**10.** The Subcontractor shall not assign this Agreement or its proceeds without prior written consent of the Contractor. Unless the Contractor's written consent specifically provides otherwise, the Subcontractor's duties and obligations hereunder shall not be modified by any such assignment.

**11.** The Subcontractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Contractor's or the Architect's review or approval of shop drawings, product data, samples or similar submittals unless the Subcontractor has specifically informed the Contractor in writing of such deviation at the time of submittal and the Contractor has given written approval to the specific deviation. No substitutions shall be made in the Subcontractor's Work unless the Subcontractor first receives all approvals required under the Contract Documents for substitutions. The Subcontractor shall indemnify the Contractor against any increased costs incurred by the Contractor as a result of such substitutions, unless the Contractor has specifically accepted such additional costs in writing.

**12.** The Contractor shall establish principal axis lines of the building and site whereupon the Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontractor's Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to set out or perform its work correctly. The Subcontractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces. Notwithstanding dimensions given on the plans, in specifications or in other Contract Documents, it shall be the obligation and responsibility of the Subcontractor to take such measurements as will ensure the proper matching and fitting of the Work covered by the Subcontract with contiguous work. Every part of the Subcontractor's Work shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds, and all materials used in the Subcontractor's Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Work, and shall be new except for such materials as may be expressly provided in the Contract Documents to be otherwise. In the event the scope of the Subcontractor's Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided and to handle, store, and install the items with such skill and care as to ensure a satisfactory and proper installation. Loss or damage due to acts of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

**13.** The Subcontractor, its agents, employees, Sub-subcontractors or suppliers shall not use the Contractor's equipment without the express written permission of the Contractor's designated representative. If the Subcontractor or any of its agents, employees, suppliers or Sub-subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Contractor, the Subcontractor shall be liable to the Contractor for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have been due solely to the negligence of the Contractor's employees operating such equipment.

**14.** If required by the Contractor at any time, the Subcontractor shall furnish a Performance and Payment Bond in the full amount of the Contract Price on a form furnished by a surety satisfactory to the Contractor. The Subcontractor shall be reimbursed at cost without retainage for the premium. Should the Subcontractor fail to promptly furnish the required Bond, the Contractor may declare the Subcontractor to be in default and to exercise all rights available under this Agreement.

**15.** The Subcontractor warrants its Work against all deficiencies and defects in materials and/or workmanship for a period of one year from the date of final acceptance of the Project by the Owner, or for such longer period as specified in the Contract Documents. The Subcontractor agrees to satisfy such warranty obligations without cost to the Owner or the Contractor and agrees to execute any special guarantees or warranties that are required for the Subcontractor's Work prior to final payment.

**16.** The Subcontractor agrees to be bound to and comply with all applicable provisions of each collective bargaining agreement, if any, to which the Contractor is signatory at the time of execution of this Agreement, and indemnify the

Contractor against any and all liability, claim, loss and cause of action or damage which result in any way from the Subcontractor not being signatory or failing to comply with the requirements of any labor agreements executed by the Contractor or the Subcontractor that are in effect during performance of the Work. Should the Subcontractor fail to comply with any provisions of such agreements, then the Contractor may, at its option, declare the Subcontractor to be in default and to exercise all rights available under this Agreement.

**17.** If any Sub-subcontractor, laborer or materialman of Subcontractor or any other person directly or indirectly acting for, through or under it, files or maintains any mechanic's lien or claim against the Project, the premises, the Owner, the Contractor or its surety, the Subcontractor shall, at its own expense, cause such lien or claim to be satisfied, removed and discharged by bond, payment or otherwise within ten (10) days from the date of the filing thereof. In the event the Subcontractor fails to so do, the Contractor may cause such lien or claim to be satisfied, removed or discharged by whatever means the Contractor chooses, at the sole cost and expense of the Subcontractor. The Subcontractor shall indemnify, protect and hold harmless the Contractor and the Owner from and against any and all such liens and claims and actions brought or judgments rendered thereon, and from and against any and all liabilities which the Contractor and/or the Owner may sustain or incur in connection therewith. In the event the Contractor has reason to believe that labor, materials or other obligations incurred in the performance of the Subcontractor's Work are not being satisfied, the Contractor shall give notice and may take any steps deemed necessary to ensure that any progress payment shall be utilized to pay such obligations. If, upon receipt of said notice, the Subcontractor does not supply evidence to the satisfaction of the Contractor that the amounts owing to the claimant have been paid, or post a bond indemnifying the Owner, the Contractor, the Contractor's surety, if any, and the premises from the potential claim or lien, the Contractor shall have the right to retain out of any payments due or to become due a reasonable amount to protect the Contractor from any loss, damage or expense relating to such obligations until they have been satisfied by the Subcontractor.

**18.** The Subcontractor assumes the entire responsibility and liability for all Work, means and methods, supervision, labor, materials and equipment provided hereunder, whether or not erected in place, and for all plant, scaffolding, tools, supplies, and other things provided by the Subcontractor until final acceptance of the Work by the Owner. In the event of any loss, damage, or destruction thereof, from any cause, the Subcontractor shall be liable therefor, and shall repair, rebuild, and immediately make good said loss, damage or destruction at Subcontractor's cost. The Contractor shall cooperate in the determination of the cause of the loss, damage or destruction. The Subcontractor shall receive its share of any Builder's Risk insurance proceeds, if any, relating to such loss, damage or destruction. Notwithstanding the above, the Subcontractor's Work covered by a partial payment application shall become the property of the Contractor upon payment. The Subcontractor shall be liable to the Contractor for all costs, direct or indirect, which the Contractor, Owner or other contractors or subcontractors incur as a result of the Subcontractor's failure to perform this Agreement, or any part hereof, in accordance with its terms. The Subcontractor's failure to perform shall include, but not be limited to, the failure of its Suppliers and/or Sub-subcontractors of any tier to perform. The liability of the Subcontractor and its surety (if any) shall include, but not be limited to (1) liquidated or actual damages and other delay costs payable by the Contractor to the Owner (which shall be assessed in proportion to the Subcontractor's share of the responsibility for such delay); (2) the Contractor's increased costs of performance, such as extended overhead and other costs resulting from Subcontractor-caused delays or improper Subcontract work; (3) warranty and rework costs; (4) liability to third parties; and (5) costs to complete the Subcontractor's work; and (6) a reasonable mark-up.

**19.** The Subcontractor agrees to the requirements of Attachment IV - Billing & Payment Requirements. No payment received by the Subcontractor shall be used to satisfy or secure any indebtedness before that owed for the furnishing of labor or materials for use in performing the Subcontractor's Work. The Contractor shall have the right at all times to contact the Subcontractor's Sub-subcontractors and Suppliers to ensure that they are being paid for labor or materials furnished for use in performing the Subcontractor's Work. The Contractor shall have the unconditional right to make payment by check(s) made payable jointly to the Subcontractor and its Sub-subcontractor(s) and/or Supplier(s) or by direct check(s) to such Sub-subcontractor(s) and/or Supplier(s). It is expressly agreed that the Contractor need not make any payment otherwise due the Subcontractor until all labor, material, tool, equipment, or other charges in connection with the Work have been fully paid. The Subcontractor agrees to earmark all payments to Sub-subcontractors and Suppliers against indebtedness arising out of the work by identifying this Project as that for which the payment is being made, and including language on each check which limits application of the payment to indebtedness arising out of the Work. No payment to the Subcontractor shall constitute or imply acceptance by the Contractor or the Owner of any portion of the Subcontractor's Work, nor shall it constitute a waiver by the Contractor of any right to require fulfillment of all the terms, covenants, and conditions of this Agreement. The Contractor shall be entitled to offset against any payment otherwise due the Subcontractor, costs incurred by the Contractor as a result of the Subcontractor's failure to properly perform its Work.

**20.** Progress payments, less Retainage, for satisfactory performance of the Subcontractor's Work shall be made, if all conditions precedent to payment have been satisfied, no later than seven (7) days after receipt by the Contractor of payment from the Owner for such Work. If for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Contractor within seven (7) days after the date such payment is due then the Subcontractor, upon giving an additional seven (7) days written notice to the Contractor may stop work until payment has been received. To the extent obtained by the Contractor under the Contract Documents, the contract price shall be increased by the amount of the Subcontractor's reasonable costs of shutdown, delay, and start-up.

**21.** Upon acceptance of the Subcontractor's Work by the Owner, the Contractor, and if necessary, the Architect and others, and upon the Subcontractor furnishing evidence of fulfillment of the Subcontractor's obligations in accordance with the Contract Documents the Contractor shall forward the Subcontractor's application for final payment without delay. Final payment of the balance of the contract price, including Retainage, shall be made to the Subcontractor upon receipt of the Owner's waiver of all claims related to the Subcontractor's Work except for unknown defective work and warranties, and within seven (7) days after receipt by the Contractor of final payment from the Owner for the Subcontractor's Work. Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontractor's Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under this Agreement, or for faulty or defective work appearing after final payment.

**22.** If the Project is an Oregon public works project, the following payment terms apply, and shall govern in the event that they are in conflict with any other provision in this Agreement:

- a) Unless there is a good faith dispute between the parties, the Contractor shall pay the Subcontractor for satisfactory performance under this subcontract within ten days out of such amounts as are paid to the Contractor by the public contracting agency under the Prime Contract.
- b) Except where there is a good faith dispute between the parties, if the Contractor fails to pay the Subcontractor for satisfactory performance within 30 days after receipt of payment from the public contracting agency, the Contractor shall pay to the Subcontractor an interest penalty on amounts due in the case of any payment not made in accordance with Section (a), above. Interest shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made. Interest shall be computed at the rate specified in ORS 279.314(2).
- c) The Subcontractor shall include in each of its sub-subcontracts and purchase orders a payment and interest penalty clause conforming to the standards of ORS 279.445(4). The Subcontractor shall also require each of its Sub-subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

**23.** When the Contractor so orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Work which are within the general scope of this Agreement. If the Contractor requests that the Subcontractor provide a price or a credit for any changes in the Work, the Subcontractor shall provide that price or credit, including detailed cost data, plus give notice of any time impact, within five (5) days or within such longer period specifically allowed in writing by the Contractor. This price and time impact shall be complete, and no reservations of rights to later adjustment shall be permitted. If the Subcontractor fails to meet this deadline, the Contractor shall be free to obtain a price or an estimate of the credit from another source of the Contractor's choice, which shall be binding on the Subcontractor. Adjustments in the contract price or contract time, if any, resulting from such changes shall be set forth in a Subcontract Change Order which shall become a part of this Agreement unless the Subcontractor notifies the Contractor in writing of an objection within three (3) days of the date of the Subcontract Change Order.

**24.** The Subcontractor agrees to make all claims for which the Owner is or may be liable in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner. Written notice of such claims shall be given by the Subcontractor to the Contractor immediately upon the Subcontractor's first knowledge of the event for which such claim is to be made, and in sufficient time to allow the Contractor to make a timely claim to the Owner. The Subcontractor agrees that, if these timelines are not met, such claims shall be deemed waived. The Subcontractor shall give the Contractor written notice of all other claims within three (3) days of the beginning of the event for which claim is made; otherwise, such claims shall be deemed waived. The Subcontractor shall provide detailed cost data in support of all claims within ten (10) days of the conclusion of the event for which the claim is made, or five (5) days less than the period allowed in the Contract Documents, whichever is earlier. If the event lasts more than thirty (30) days, the Subcontractor shall give the Contractor detailed cost data within ten (10) days of the conclusion of each thirty (30) day period unless the Contract Documents provide for a shorter time frame. In either case, failure to timely provide such detailed cost data shall constitute a waiver of the claim.

**25.** In the event that the Subcontractor performs any Work, whether related to agreed changes or non-contracted services, on a time and materials basis, any mark-up for combined overhead and profit shall be limited to ten percent (10%) of the direct cost. A record of labor expended (including supervision) and materials used must be submitted to the Contractor's representative daily or shall not be accepted as valid. The signature of the Project Superintendent shall acknowledge that work was performed, but shall not constitute agreement that the work is beyond the scope of this Agreement.

**26.** If the progress of the Subcontractor's Work is substantially delayed without the fault or responsibility of the Subcontractor, then the time for the Subcontractor's Work shall be extended by Change Order to the extent obtained by the Contractor under the Contract Documents, and the Schedule of Work shall be revised accordingly. The Contractor shall not be liable to the Subcontractor for any damages or additional compensation as a consequence of delays caused by any third party unless the Contractor has first recovered the same on behalf of the Subcontractor from said party.

**27.** If, prior to the Subcontractor's scheduled commencement of the Work or during a period when no Work is required, the Contractor becomes concerned about the Subcontractor's ability to perform in strict accordance with all of the provisions of this Agreement, the Contractor may demand in writing that the Subcontractor provide, within three (3) working days after receipt of such demand, adequate assurances of performance, the sufficiency of which shall be determined at the sole discretion of the Contractor. If the Subcontractor fails to provide adequate assurances of performance within three (3) working days, the Contractor may declare the Subcontractor in default and exercise its rights and remedies under this Agreement.

**28.** If the Subcontractor refuses or fails to supply enough properly skilled workers or proper materials, or to maintain the Schedule of Work, or it fails to make prompt payment for its workers, Sub-subcontractors or Suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, and fails within two (2) working days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then the Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

- a) Supply such number of workers and quantity of materials, equipment and other facilities as the Contractor deems necessary for the completion of the Subcontractor's Work, or any part thereof, and charge the costs thereof to the Subcontractor, who shall be liable for the payment of same, including reasonable overhead, and profit.
- b) Contract with one or more additional contractors to perform such part(s) of the Subcontractor's work as the Contractor shall determine will provide the most expeditious completion of the total Work and charge the cost thereof to the Subcontractor.
- c) Withhold payment otherwise due the Subcontractor pending corrective action to the extent required by and to the satisfaction of the Contractor and Owner.

In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice. If the Contractor performs or sublets such Work, the Contractor and/or the persons to whom work has been sublet shall have the right to take and use any materials, equipment, appliances or tools furnished by, or belonging or delivered to the Subcontractor and located at the Project. If the Subcontractor fails to commence and satisfactorily continue correction of a default within the two (2) day notice, the Contractor may issue a second written notice to the Subcontractor, and its surety, if any, to the effect that, if the Subcontractor fails to commence and continue correction of a default within five (5) working days after receipt by the Subcontractor of the notice, the Contractor may terminate this Agreement and use any materials, equipment, appliances or tools furnished by or belonging to the Subcontractor to complete the Subcontractor's Work. All of the costs incurred by the Contractor in so performing the Subcontractor's Work, including reasonable overhead and profit, shall be deducted from any payment(s) due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price. Upon determination by a court or arbitrator(s) that a termination under this process was wrongful for any reason, such termination shall be deemed converted to a termination for convenience, and the Subcontractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted under a termination for convenience.

**29.** The Contractor may order the Subcontractor in writing to suspend, delay, or interrupt all or any part of the Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. The Subcontractor shall notify the Contractor in writing within three (3) working days after receipt of the Contractor's order of the effect, if any, of such order, and the Contract Price or contract time may be adjusted by Subcontract Change Order. Neither the Contract Price nor the contract time shall be adjusted for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted through the fault or negligence of the Subcontractor. The Contractor shall have the right at any time to order in writing the termination of this Agreement for any cause. The

Subcontractor shall then notify the Contractor in writing within five (5) working days after receipt of the Contractor's order of its effect. The Subcontractor shall be entitled to be paid a prorated portion of the Subcontract price equal to the percentage of completion of the Work plus reasonable direct close-out costs, excluding anticipated profits, less partial payments previously made, except that if there is also a termination of the prime contract, settlement shall be as provided in the Contract Documents. In no event shall the Subcontractor be entitled to assert a claim in quantum meruit or based upon any measure of damages other than that stated herein.

**30.** Should the Owner suspend the Prime Contract or any part of the Prime Contract which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing and, upon receipt of said notice, the Subcontractor shall immediately suspend the Subcontractor's Work. In the event of such Owner suspension, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Contract Documents. Should the Owner terminate the Prime Contract or any part of the Prime Contract which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing that this Agreement, except for the provisions of this Article, shall also be terminated and the Subcontractor shall immediately stop Work. In the event of such Owner termination, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Contract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension or termination.

**31.** Upon the appointment of a receiver for the Subcontractor or upon the Subcontractor making an assignment for the benefit of creditors, the Contractor may terminate this Agreement upon giving three (3) working days' written notice to the Subcontractor and its surety, if any. If an order for relief is entered under the bankruptcy code with respect to the Subcontractor, the Contractor may terminate this Agreement by giving three (3) working days' written notice to the Subcontractor, its trustee, and its surety, if any, unless the Subcontractor, the surety, or the trustee promptly cures all defaults, provides assurance for future performance, the adequacy of which shall be determined at the sole discretion of the Contractor, compensates the Contractor for actual loss resulting from such defaults, and assumes the obligations of the Subcontractor within the statutory time limits. If the Subcontractor is not performing in accordance with the Schedule of Work at the time of entering an order for relief, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies as are reasonably necessary to maintain the Schedule of Work. The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead and profit. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the contract price.

**32.** To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, the Architect, the Contractor (including its affiliates and subsidiaries) and other contractors and subcontractors, and others as required by the Contract Documents, and all of their agents and employees from and against all claims, damages, loss and expenses arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the Subcontractor, or the fault of the Subcontractor's agents, representatives or subcontractors. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, the Architect, the Contractor (including its affiliates and subsidiaries) and other contractors and subcontractors, and others as required by the Contract Documents, and all of their agents and employees from and against any and all other claims, damages, loss and expenses arising out of or occurring in connection with the Work or arising out of the acts or omissions of the Subcontractor or Subcontractor's agents, representatives or subcontractors. These obligations shall exist regardless of whether loss or damage is caused in part by a party indemnified hereunder and shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

In any and all claims against the Owner, the Architect, the Contractor (including its affiliates, parents and subsidiaries), and other contractors or subcontractors, or any of their agents or employees, by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. The obligations of the Subcontractor under this Article shall not extend to the liability of the Architect, its agents or employees, arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by the Architect, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage. If the Project is located in the State of Washington, the Subcontractor's indemnification obligation shall be defined in the Indemnification Addendum. The Subcontractor's assumption of liability under this Agreement is independent

from, and not limited in any manner by, the Subcontractor's insurance coverage obtained pursuant to this Agreement or otherwise. All amounts owed by Subcontractor to Contractor as a result of the liability provisions of the Subcontract shall be paid upon demand.

**33.** Except as otherwise provided by the Contract Documents, the Subcontractor shall pay all royalties and license fees which may be due on the use of any patented materials in the Subcontractor's Work. The Subcontractor shall defend all suits for claims for infringement of any patent rights arising out of the Subcontractor's Work, which may be brought against the Contractor or the Owner, and shall indemnify and hold harmless the Contractor and Owner from all losses, costs or expenses.

**34.** All claims, disputes and matters in question arising out of, or relating to, this Agreement or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, and the exceptions listed below, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, but in no event shall it be made after the date of final acceptance of the Work by the Owner or when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations, or after any contract or other time limitation that would preclude the Contractor from bringing in any other party involved in a common question of fact or law, whichever shall first occur. The location of the arbitration proceedings shall be the city of the Contractor's headquarters. The Subcontractor shall continue its Work and maintain the Schedule of Work pending arbitration, and, if so, the Contractor shall continue to make payments in accordance with this Agreement. The Subcontractor agrees to withhold any action under lien laws or payment bonds until the arbitration is concluded. To the extent not prohibited by their contracts with others, the claims and disputes of the Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. An award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. This agreement to arbitrate shall not apply to any claim:

- a) of contribution or indemnity asserted by one party to this Agreement against the other party and arising out of an action brought in a state or federal court or in arbitration by a person who is under no obligation to arbitrate the subject matter of such action with either of the parties hereto; or does not consent to such arbitration; or
- b) asserted by the Subcontractor against the Contractor if the Contractor asserts said claim, either in whole or in part, against the Owner and the Contract between the Contractor and Owner does not provide for binding arbitration, or does so provide but the two arbitration proceedings are not consolidated, or the Contractor and Owner have not subsequently agreed to arbitrate said claim, in either case of which the parties hereto shall so notify each other either before or after demand for arbitration is made. In any dispute arising over the application of these exceptions, the question of arbitrability shall be decided by the appropriate court and not by arbitration.

**35.** This Agreement shall be governed by the law of the state in which the Project is located, unless otherwise specified in the Contract Documents. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any other terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment or such term, covenant, condition or right as respects further performance.