

## TERMS AND CONDITIONS

### PERFORMANCE

1. The SUBCONTRACTOR is responsible for the general layout and final locations for all of the work it is to install. The SUBCONTRACTOR is responsible for coordination with all other subcontractors for its equipment and systems locations. The SUBCONTRACTOR is responsible for all drilling, sleeving and patching of all penetrations through walls, floors or roof, for all work it installs.
2. The SUBCONTRACTOR shall clean-up and remove all rubbish and debris on a daily basis and repair all damage resulting from its operation. All debris is to be properly disposed of into the CONTRACTOR provided trash dumpster located at the job site. The CONTRACTOR shall accept responsibility for conditions existing prior to the beginning of work by SUBCONTRACTOR; provided however SUBCONTRACTOR shall notify CONTRACTOR in writing of specific items of concern before it commences its work. The CONTRACTOR'S decision is final in any unresolved dispute between two or more subcontractors over their responsibility for rubbish clean-up or damage repair. The SUBCONTRACTOR shall be charged an hourly rate of \$30.00 per man-hour for all debris cleaned up by the CONTRACTOR which amount shall be withheld and deducted from any payment due SUBCONTRACTOR.
3. The SUBCONTRACTOR shall provide the CONTRACTOR a valid Certificate of Insurance for both Workers Compensation and General Liability Insurance in an amount satisfactory to CONTRACTOR before any work is performed. Failure to provide said evidence of insurance prior to the commencement of SUBCONTRACTOR work shall result in the SUBCONTRACTOR'S work being delayed until the certificate is provided or at the option of CONTRACTOR, terminated. Any money due the SUBCONTRACTOR may be forfeited to the CONTRACTOR and this Agreement may be terminated all at the discretion of the CONTRACTOR as a result of SUBCONTRACTOR'S non-compliance with this provision.
4. No extra work or changes under this Agreement shall be recognized or paid for, unless agreed to in writing by the CONTRACTOR'S Project Manager, who works from CONTRACTOR'S home office, before the work is done or any changes are made. The CONTRACTOR'S Project Superintendent, whose office is located at the Project site, does not have the authority to authorize work beyond the scope of this Agreement. Only the CONTRACTOR'S Project Manager is authorized to make changes to this Agreement.
5. The SUBCONTRACTOR agrees to perform in the best manner and using the best methods, using new materials unless otherwise specified, and is to exercise diligence in not wasting material and in using as much of the scrap pieces as possible while maintaining a quality installation.
6. Prior to the commencement of its work SUBCONTRACTOR shall provide CONTRACTOR with its written Project safety plan.
7. The SUBCONTRACTOR shall provide adequate cups, ice and water for its crews and suppliers. The SUBCONTRACTOR'S crews and suppliers must provide and wear hardhats at all times while on the Project site. SUBCONTRACTOR is also required to wear appropriate job site clothing which includes long pants, shirts, and hard soled shoes or boots. CONTRACTOR may, at its sole discretion, refuse SUBCONTRACTOR access to the jobsite until SUBCONTRACTOR is in compliance, and/or assess a penalty of \$100.00 per occurrence in the event SUBCONTRACTOR does not comply with CONTRACTORS' Project site safety requirements. Penalties shall be deducted from SUBCONTRACTORS' next pay request. CONTRACTOR may, but is not required to, give SUBCONTRACTOR one (1) verbal warning prior to assessing any penalties. The SUBCONTRACTOR must comply with all local, state and federal laws and regulations applicable to the Project and SUBCONTRACTORS' performance under this agreement. SUBCONTRACTOR is responsible for any penalties or assessments incurred by CONTRACTOR as a result of SUBCONTRACTOR'S operations, cited during inspection(s) conducted by local, county, state or federal governing authorities.
8. All work of SUBCONTRACTOR shall be done in accordance with the Plans and Specifications prepared by ARCHITECT. All work is to be installed to the satisfaction of Owner, ARCHITECT, and CONTRACTOR. No deviations from the Plans and Specifications shall be accepted without the prior written approval from the ARCHITECT and CONTRACTOR. All SUBCONTRACTOR work shall be installed in a neat, orderly, workmanlike manner. All systems installed by SUBCONTRACTOR shall be complete working systems.
9. CONTRACTOR shall, throughout construction of the Project, prepare, maintain, and provide to SUBCONTRACTOR, a Project Schedule of Completion (the "Schedule."). The SUBCONTRACTOR shall adhere to CONTRACTOR'S schedule including all Schedule modifications made by CONTRACTOR. SUBCONTRACTOR shall install its work in strict accordance with, and shall abide by the time periods established for its work, as set out in the Schedule. CONTRACTOR shall have the sole right to, from time to time, reasonably amend and revise the Schedule.

In the event SUBCONTRACTOR fails to perform its work within the time periods established for its work in the Schedule, CONTRACTOR shall have the right, but not the requirement, to assess a Non-Performance Penalty in the amount of \$500.00 per calendar day, for each and every day SUBCONTRACTOR'S work installation exceeds the time period established for its work in the Schedule.

SUBCONTRACTOR may, in writing, petition CONTRACTOR for additional work days in the Schedule (a "Schedule Extension,") for delays due to weather or other reasonable causes. CONTRACTOR will review each request, and make a determination as to its validity. Any request for Schedule Extension must be made in writing, within seven (7) days of occurrence, and must include adequate documentation supporting such request.
10. The SUBCONTRACTOR agrees to perform and coordinate its work with that of the CONTRACTOR and other subcontractors to the best interests of the Project as a whole as directed by the CONTRACTOR, and shall abide by the decision of the CONTRACTOR as to the allotment of storage space, working space, and scheduling. If the SUBCONTRACTOR fails or refuses to proceed with its work as directed by the CONTRACTOR or fails to perform said work in accordance herewith, in whole or in part, or fails to perform any term, covenant or condition contained in this Agreement, the CONTRACTOR may at its sole option, upon three (3) days written notice delivered by hand delivery, certified mail, electronic mail, or overnight courier with next day delivery guaranteed, to the SUBCONTRACTOR'S last known address, take any steps the CONTRACTOR deems advisable to secure any labor and/or materials or services, and may take over all of the SUBCONTRACTOR'S equipment, and materials and prosecute the work to completion.
11. In case the CONTRACTOR deems the foregoing procedure necessary, all money expended and all of the losses, damages and extra expenses shall be deducted from the Contract Price herein stated. If such expenditures, together with said losses, damages and extra expenses, exceed the amount otherwise due the SUBCONTRACTOR hereunder, the SUBCONTRACTOR agrees to pay to the CONTRACTOR on demand the full amount of such excess.
12. The SUBCONTRACTOR shall pay all Permits, Sales or Use Taxes, Old Age Benefits and Unemployment Compensation Taxes on the materials and labor furnished under this Agreement, as required by the United States Government, state government, county, parish, and the city in which the work is to be performed.
13. The SUBCONTRACTOR agrees not to assign or sublet this Agreement, or any part thereof, without first obtaining the written consent of the CONTRACTOR and the SUBCONTRACTOR'S surety with evidence of such written consent furnished to the CONTRACTOR. Any assignment of money due hereunder made without such consent, and without the consent of the CONTRACTOR, when required, is void, and the assignee in such case shall acquire no rights against the CONTRACTOR or CONTRACTOR'S surety.
14. The SUBCONTRACTOR agrees to be bound to the CONTRACTOR by the terms of CONTRACTOR'S general contract for this Project (hereinafter the "Construction Agreement") with Owner, and to assume all the duties and obligations the CONTRACTOR assumes in the Construction Agreement insofar as they are applicable to this Agreement unless expressly and specifically changed by the terms of this Agreement.
15. The CONTRACTOR maintains "Material Safety Data Sheets" in accordance with the Occupational Safety and Health Act (O.S.H.A.) "Hazard Communication Standard" in the Project on-site office for the construction products and materials supplied by the CONTRACTOR. The SUBCONTRACTOR and SUBCONTRACTOR'S employees may review these at any time. It is the SUBCONTRACTOR'S responsibility to inform its employees of this right. The SUBCONTRACTOR'S managing personnel assumes all responsibility and liability for insuring the SUBCONTRACTOR'S employees on site are properly informed and educated as to Hazardous Communication and Material Safety Data Sheets, and assumes all responsibility for proper labeling of hazardous material brought onto or leaving the site. Fines or penalties imposed on the CONTRACTOR for a SUBCONTRACTOR'S non-compliance with this or any Occupational Safety and Health Act "(a.k.a. "O.S.H.A.") regulation are chargeable to the SUBCONTRACTOR. The CONTRACTOR reserves the right for its employees to review the SUBCONTRACTOR'S "Material

Safety Data Sheets" information, labeling, safety programs, etc.

16. The SUBCONTRACTOR shall be responsible to the CONTRACTOR for compliance with all safety rules and regulations during the course of the SUBCONTRACTOR'S performance on and in connection with this Project. The SUBCONTRACTOR shall defend and indemnify the CONTRACTOR for any lawsuits, causes of actions, claims, liabilities and damages, of any kind and nature including, but not limited to, attorney's fees and costs arising out of acts of commission or omission by the SUBCONTRACTOR, its agents, employees, and assigns in failure to comply with such safety rules and regulations.
17. In addition to the foregoing provisions, the parties also agree that SUBCONTRACTOR shall indemnify, hold harmless and defend CONTRACTOR, its agents and employees from any lawsuits, causes of action, claims, liabilities and damages, of any kind and nature, including but not limited to, attorney's fees and costs arising out of the performance of this Agreement whether attributable in whole or in part to any act, omission or negligence of CONTRACTOR, its agents or employees, and including, but not limited to, any and all lawsuits, causes of action, claims, liabilities and damages, as provided above which CONTRACTOR, its agents or employees may sustain by reason of any failure by SUBCONTRACTOR to indemnify as provided herein, or any failure by SUBCONTRACTOR to otherwise perform its obligations pursuant to this Agreement, or by reason of the injury to or death of any person or persons or the damage to, loss of use of or destruction of any property resulting from Work undertaken herein.
18. At the sole option of CONTRACTOR, all claims that arise hereunder against the CONTRACTOR, its surety, by the SUBCONTRACTOR, its surety, and any other party may be required by CONTRACTOR to be submitted to binding arbitration pursuant to the rules of the American Arbitration Association, with the arbitration to be held in Fort Smith, Arkansas, with the costs of arbitration to be paid by the party making the claim against the other party, are agreed to be arbitrated and consolidated into one arbitration where consolidation would be an economic use of time in resolving arbitral issues.

#### **WARRANTY**

19. The SUBCONTRACTOR provides its express warranty and representation to CONTRACTOR that its work shall be free of all defects with regard to materials and workmanship and its work shall be in strict compliance with the Plans and Specifications. SUBCONTRACTOR further represents and warrants to CONTRACTOR that the terms of this warranty and representation shall remain in full force and effect until the expiration of CONTRACTOR'S warranty under the Construction Agreement which WARRANTY PERIOD is three hundred, sixty-five (365) days from the date of the later of: the issuance of a Certificate of Occupancy for the Project by the local governing authority having jurisdiction; or Substantial Completion of the Project, as determined by the ARCHITECT; or the date the Owner commences occupancy of the said building.
20. SUBCONTRACTOR acknowledges and recognizes that certain "defects" may not be discovered until some time subsequent to the said date of occupancy of the Project, and that SUBCONTRACTOR'S warranty time period may be extended accordingly. Where the cause of defects to SUBCONTRACTOR'S work is not known, SUBCONTRACTOR shall be responsible to correct such defects at its sole expense. During the WARRANTY PERIOD SUBCONTRACTOR shall be required to provide material and labor warranty for ALL of its Work. Upon notification to SUBCONTRACTOR by either CONTRACTOR or Owner of the need for warranty work, SUBCONTRACTOR shall respond within seven (7) calendar days or less, unless the warranty work necessitates immediate attention.
21. In the event SUBCONTRACTOR fails to perform the warranty work within the time periods set forth hereinabove, then CONTRACTOR may, at its sole discretion, perform the work in behalf of SUBCONTRACTOR and may bill SUBCONTRACTOR for the work at a rate of its direct cost plus fifteen (15) percent for overhead, plus ten (10) percent profit. Warranty work performed by CONTRACTOR for SUBCONTRACTOR shall be at the sole and complete discretion of CONTRACTOR. SUBCONTRACTOR shall be required to pay CONTRACTOR'S billing for the work within ten (10) days of receipt of any such billing.

#### **PAYMENT**

22. SUBCONTRACTOR, prior to beginning its work, shall provide CONTRACTOR the following:
  - a. A listing of all anticipated material suppliers with contact information.
  - b. A listing of all anticipated second tier subcontractors (for approval by the CONTRACTOR).
  - c. A schedule of Values for work to be performed.
23. Requests for payment are due on or before the 25<sup>th</sup> day of each month at the home office of the CONTRACTOR. The amount due shall be paid as follows: As the CONTRACTOR receives payments from the Owner for work performed and materials furnished, which shall be based upon percentages of work actually complete, the SUBCONTRACTOR shall receive its proportionate part less applicable retainage in the amount of ten percent (10%) of the value of work in place. Before making payment to SUBCONTRACTOR, the SUBCONTRACTOR must have furnished the certificates of insurance described above, naming the CONTRACTOR as an additional named insured, and further providing the following two classes of documents in addition to the requisition:
  - a. Affidavit listing laborers, 2<sup>nd</sup> tiered subcontractors, and material suppliers who have not been paid through the date of the requisition sought or otherwise indicating that all of said persons have, in fact, been paid. If the affidavit lists persons unpaid, then the CONTRACTOR at its option may make payment jointly to aforesaid listed persons, or directly to aforesaid listed persons as to undisputed amounts. Payment shall be withheld for disputed amounts.
  - b. Release of liens/bond claims through the date of the requisition for which payment is sought.
24. Requests for payment which include costs for "move-in" or "mobilization" expenses must be substantiated to CONTRACTOR before consideration for payment.
25. Requests for payment of stored material may be considered only when the material has been either delivered directly to the job site, or is stored at a secure offsite location with endorsement of the SUBCONTRACTOR'S insurance policy in the amount of materials stored, and which names CONTRACTOR as an Additional Named Insured. Payment of stored materials is further conditioned upon receipt by CONTRACTOR of the original invoice prepared by the material supplier and is reduced by the appropriate retainage. No provision for profit is payable by CONTRACTOR for stored material invoices.
26. Should the CONTRACTOR receive information indicating that the SUBCONTRACTOR is not promptly discharging obligations incurred in connection with the performance of this Agreement such as, but not limited to, materials, labor, insurance, transportation or taxes, at the discretion of CONTRACTOR, the CONTRACTOR shall delay payments to SUBCONTRACTOR for an additional period of time which shall be a minimum of thirty (30) days, or until CONTRACTOR has determined that funds drawn are properly applied to this Agreement to cover such obligations.
27. The SUBCONTRACTOR agrees that money received for the performance of the Agreement shall be used first for labor and material entering into this work and that this money shall not be diverted to satisfy any other obligations of the SUBCONTRACTOR.
28. The retained amount shall be paid after final estimate is made and after the ARCHITECT and the Owner have certified their acceptance of the Project, and after the CONTRACTOR has been paid by the Owner

#### **MISCELLANEOUS**

29. In the event of litigation between the parties, the CONTRACTOR shall be entitled to recover in full its attorney's fees and out-of-pocket costs from SUBCONTRACTOR or its surety.
30. In the event any provision of this agreement is held to be void or invalid for any reason whatsoever, the remaining provisions hereof shall remain in full force and effect and shall be enforceable to the maximum extent possible, as if the void or invalid provision had never been a part of this agreement.
31. This Agreement constitutes the entire agreement between the parties superseding all prior verbal or written proposals or agreements. END

**SUBCONTRACTOR'S INITIALS** \_\_\_\_\_