



## Appendix 3 - Subcontract Standard Conditions

MARCH 2023

SUBCONTRACT NUMBER: \_\_\_\_\_

### 1. PERFORMANCE OF WORK.

(A) The Subcontractor shall perform and furnish all the work, labor, services, materials, supplies, equipment, tools, appliances, scaffolds, and other things necessary for completion of the scope of work included in this Subcontract, as more particularly described in Appendix 5 (hereinafter called the "Work"). The Work shall be performed in accordance with all provisions of the plans, specifications, general conditions, special conditions referred to herein, and pursuant to the terms of this Subcontract. The Subcontractor shall also complete its Work in strict accordance with the terms and provisions of the contract (hereinafter "Prime Contract") between Contractor and the Principal and/or Owner and in accordance with all plans and specifications referred to therein. The plans, specifications, general conditions, special conditions, addenda, the Subcontract and the Prime Contract have been made available to the Subcontractor and have been reviewed by the Subcontractor. All of the aforesaid documents, including this Subcontract, are hereinafter referred to as the "Contract Documents". The Subcontractor agrees that it has reviewed this Agreement and the other Contract Documents and has not relied upon statements or representations of the Contractor, the Principal and/or the Owner in entering into this Subcontract.

(B) With respect to the Work provided hereunder, Subcontractor agrees that all of the Contract Documents, including the Prime Contract, shall be deemed to be incorporated herein by reference and made a part hereof, and the Subcontractor agrees to be bound to Contractor by all of the terms and provisions thereof in the same way to which Contractor is bound to Owner. To the extent the terms relate in any way to the Work or Subcontractor's obligations under this Agreement, Subcontractor agrees further that the Contractor shall have the same rights and remedies against the Subcontractor as the Owner and/or Principal has against the Contractor under the terms of the Prime Contract and the other Contract Documents. The terms of the Contract Documents apply with same force and effect as though each and every such duty, obligation, responsibility, right or remedy were set forth herein in full. The Subcontractor warrants and guarantees that it has examined and reviewed the Contract Documents to his satisfaction and understands and accepts the requirements therein.

### 2. COMMENCEMENT AND COMPLETION OF WORK.

TIME IS OF THE ESSENCE FOR THIS SUBCONTRACT AND TIMELY PERFORMANCE OF THE WORK IS A CRITICAL REQUIREMENT OF THIS SUBCONTRACT. The Subcontractor further hereby agrees that:

(A) In accordance with the mutually agreed upon schedule, the Subcontractor will commence in the field the Subcontract Work to be done hereunder at such points as the Contractor may designate, and will continue diligently in the performance thereof in accordance with the Contract Documents and the Project Schedule, including revisions thereto, to the satisfaction of the Contractor, Principal and/or Owner and the Architect/Engineer so as to not delay the progress of any work required by this Subcontract and with due consideration that other work is dependent upon the Work of this Agreement for project completion.

(B) The Subcontractor acknowledges that it is familiar with and understands the Project Schedule and agrees that Subcontractor will carry on its Work in a manner that will not cause delay in the progress of the work on the Project.

(C) The Subcontractor further warrants and guarantees that the Subcontract Price herein includes any costs and expenses required to comply with the Project Schedule, including revisions thereto, and all expenses or costs incurred in doing so, including, without limitation, mobilizing and demobilizing its forces more than once, working overtime or multiple shifts, night work, working in adverse weather, and adding people or equipment, or otherwise. Any such expenses or costs shall be the sole responsibility of the Subcontractor, and the Subcontractor will not be entitled to any payments in excess of the Subcontract Price.

(D) Subcontractor shall at all times supply adequate tools, appliances, and equipment, and shall also at all times supply and promptly pay for a sufficient number of properly skilled workmen and a sufficient amount of materials and supplies of proper quality to efficiently and properly prosecute the said Work in accordance with the Project Schedule, and any modifications thereto.

(E) If Subcontractor falls behind in the progress of the Work or otherwise fails to perform in accord with the Contract Documents or Project Schedule, Contractor may, upon notice to Subcontractor and failure to cure within forty-eight (48) hours, issue a deductive change order, supplement Subcontractor's labor force, take over the Work, or otherwise direct Subcontractor to take such steps as Contractor in its sole discretion deems necessary to improve the rate of progress, including requiring Subcontractor to increase the labor force, number of shifts and/or overtime operations, days of work, amount of equipment or other remedies, without any cost to Contractor or Owner, and with such costs and expenses to be borne solely by the Subcontractor.

(F) The Contractor shall have the right, at its option and within its sole discretion, to perform, without prior notice to or consent from Subcontractor, any work deemed necessary by the Contractor, Principal and/or Owner and Architect/Engineer to establish and/or maintain the safety of its workmen, the Subcontractor's workmen and the general public, including without limitation, Work covered by this Subcontract, and to charge the Subcontractor for all costs resulting from and relating to the performance of such work by or on behalf of the Contractor.

(G) If the Prime Contract provides for liquidated or other damages for delay beyond the completion date set forth in the Subcontract, and such damages are assessed, the Contractor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. This shall not limit the Subcontractor's liability to the Contractor for the Contractor's actual delay damages caused by the Subcontractor's delay.

(H) Should the progress of the Work be delayed, disrupted or interfered with by any fault or neglect or act or failure to act on the part of the Subcontractor or any of its officers, agents, servants, employees, subcontractors and suppliers so as to cause any additional cost, expense, liability or damage to Contractor and/or the Owner, the Subcontractor hereby agrees to pay Contractor and/or the Owner for and indemnify them against all such cost, expenses, damages, liabilities, including attorneys' fees incurred.

### 3. CHANGES IN THE CONTRACT DOCUMENTS.

(A) It is understood and agreed that: (i) the Contractor is not an insurer or guarantor of the Subcontract Work, the Contract Documents concerning same, or of any part thereof, or of the performance by the Principal and/or Owner of the Prime Contract, as specified therein or otherwise, and (ii) the Subcontractor shall be bound by any changes or alterations made by the Principal and/or Owner or the Architect/Engineer in the Contract Documents, including without limitation, the plans and/or specifications in the Contract Documents affecting the Subcontract Work hereunder, or in the amount or character of said Subcontract Work or any part thereof, to the same extent that the Contractor is bound thereby. The Subcontractor's recovery due to changes in the Contract Documents is limited to any increase in the Contract Sum and/or Contract Time as is recovered by the Contractor from the Owner.

(B) If a change is a deductive change, Subcontractor shall not be entitled to receive any lost profits on any amount(s) or item(s) deducted from the scope of its Work.

(C) If a dispute arises between Contractor and Subcontractor regarding whether particular work is a change in the Work, or the time and cost to perform changed work, Subcontractor shall timely perform the changed work and may give written notice of a claim for additional compensation to Contractor at the time of the claim occurrence.

**NOTE: ALL REVISIONS TO THE TERMS AND CONDITIONS OF THIS APPENDIX 3 MUST BE LISTED ON APPENDIX 2 AND APPROVED BY THE CEO OR COO OF CROWDER CONSTRUCTORS INC.**

#### 4. LIABILITY OF SUBCONTRACTOR.

(A) To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Contractor, Principal and/or Owner, the Architect/Engineer, and any other person or entity which is identified as an indemnitee of the Contractor within the Contract Documents (the "Indemnified Parties"), as well as all of their respective agents and employees, heirs, successors, and assigns from all damages, losses, claims, demands, suits, penalties and expenses, including reasonable attorneys' fees, (collectively, "Liability") arising out of or resulting from the Subcontractor's failure to comply with this Subcontract, Subcontractor's performance of the Work and/or Subcontractor's acts or omissions in the performance of any part of the Work. This indemnity shall be effective whether the Work, act, or omission is done by Subcontractor's employees, subcontractors, consultants, designers, laborers, or materialmen. This indemnity shall extend to, but is not limited to, claims or damages for property damage, bodily injury, sickness, death, damage to or loss of tangible property, and accidents or occurrences arising from the Subcontractor's furnishing and/or storing of materials. The full and faithful performance of the Subcontractor's indemnification obligations is an express condition precedent to the Subcontractor's right to receive payment in whole or in part of the Subcontract Price. The Contractor's indemnity rights granted by this Subcontract are in addition to all other remedies to which the Contractor is entitled by this Subcontract, by the Contract Documents, or by law. Notwithstanding the foregoing, however, the Subcontractor shall not be obligated to indemnify the Indemnified Parties to the extent such Liability is caused, in whole or in part, by the negligence or willful misconduct of one or more of the Indemnified Parties.

(B) The Contractor may, at its sole discretion, withhold from any payment otherwise due under this Subcontract such amounts as Contractor believes are necessary to protect it against damages covered by this section or which amounts Contractor believes will be necessary to complete or remediate the Work.

(C) The indemnity obligations of this Section further apply to Liability associated with actual or asserted infringement of any patents, copyrights, misappropriation of trade secrets, or proprietary information arising out of the use or sale of any materials, equipment, designs, or other things furnished by the Subcontractor hereunder.

(D) The Subcontractor's indemnification obligations hereunder 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' compensation acts, disability acts, or any other benefit acts, and shall apply to the fullest extent permitted by law regardless of legal theory or alleged negligence of the party to be indemnified excepting only those instances which are caused by the sole negligence or willful misconduct of the Contractor or Owner and/or Principal.

(E) In the event that this Subcontract is, for whatever reason, executed after the Work on the project has begun, then the parties agree that they intend the indemnity provisions of this Subcontract to have application from the outset of the Subcontractor's work

(F) Notwithstanding any provision of this Subcontract to the contrary, Contractor expressly waives any and all rights of recovery from Subcontractor to the extent that Contractor's loss is covered by insurance.

#### 5. BONDS.

(A) If required by the Subcontract, Subcontractor shall obtain payment and performance bonds which shall be issued by a corporate surety duly licensed as such in the state in which the Subcontract Work is to be performed (each covering the Subcontract Work herein undertaken and being in the full amount shown under the Subcontract Price).

(B) The Subcontractor shall pay all premiums and costs in connection with all bonds which the Subcontractor shall be required to furnish or provide hereunder.

(C) All bonds shall be carried with a company or companies acceptable to the Contractor.

#### 6. INSURANCE.

(A) During the entire period of this Subcontract and the performance of Work hereunder, the Subcontractor shall obtain, furnish and continuously carry insurance in the amounts specified and in accordance with requirements of the Contract Documents, including any insurance requirements of the Prime Contract applicable to the Subcontract Work. In addition to the insurance requirements of the Prime Contract, Subcontractor must obtain insurance as set forth on Appendix 6. Appendix 6 shall be deemed to be incorporated herein by reference and made a part hereof.

(B) The Subcontractor shall provide the Contractor, before commencement of work, certificates from the Subcontractor's insurance carriers certifying compliance with all insurance requirements of the Contract Documents, including the Prime Contract, Subcontract, and Appendix 6, and showing that such insurance is in force. No required insurance shall be canceled or annulled except upon at least thirty (30) days prior written notice of such to the Contractor.

(C) All insurance shall be carried with a company or companies acceptable to the Contractor and the Contractor's provider of similar insurance.

(D) The Subcontractor shall cause the Contractor to be named as additional insured on each of its applicable policies, and attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy. These certificates and the insurance policies required by this Section shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been provided to the Contractor. Additionally, the Subcontractor shall cause such other persons, firms and/or corporations to be named as additional insured(s) in said policies as the Contractor and Contract Documents require.

(E) The Subcontractor shall pay all premiums and costs in connection with all insurance which the Subcontractor shall be required to furnish or provide hereunder.

(F) The Contractor may place insurance of the character, nature and amounts described above to cover the operations of the Subcontractor, paying the premiums for same and charging such to the Subcontractor, or may declare this Subcontract void and of no effect without liability to the Contractor or prejudice to any of its legal or equitable rights hereunder if the insurance coverage and the bonds required in Section V above, or as required by the Subcontract, have not been obtained and certificates thereof provided to the Contractor before the earlier occurrence of the Subcontractor beginning performance hereunder or the expiration of fourteen (14) days after the date of this Subcontract. Should the Contractor allow the Subcontractor to begin work prior to receipt of evidence of the required insurance and bonds, the Subcontractor warrants that it has obtained the required insurance and bonds and that evidence of same will be forthcoming. The Contractor's failure to insist upon strict and timely compliance with this provision shall not be a waiver of the requirements hereof. Consequently, such failure of the Subcontractor to comply with the requirements of this section of the Subcontract shall be a continuing material breach of this Subcontract, pursuant to which the Contractor may, at any time thereafter, exercise any and all rights against the Subcontractor for such breach. Receipt of evidence of required bonds and insurance by the Contractor shall be a Condition Precedent to the Subcontractor's entitlement to any payments under this Subcontract.

(G) The Subcontractor agrees that in the event any of the work to be performed under this Subcontract is further sublet, the Subcontractor shall require similar insurance from his subcontractors as herein required of the Subcontractor.

(H) Subcontractor hereby waives all rights of recovery against Contractor and Principal/Owner, together with their respective officers, board members, employees and agents, to the extent any losses, claims or damages are covered by any policy of insurance available to Subcontractor. Subcontractor further waives all rights of recovery that are not covered by insurance because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or failure to maintain insurance as required herein. Subcontractor warrants and guarantees that it has obtained endorsements and/or insurer consent as needed to effectively waive subrogation rights as provided for herein.

#### 7. PATENTS.

The Subcontractor shall indemnify, defend, save, and hold harmless the Contractor from liability of any nature or kind for or on account of the use of any patented or unpatented invention, article, appliance or process furnished or used in or in connection with the performance of the Subcontract Work.

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## 8. SUBLETTING AND ASSIGNMENT.

The Subcontract Work shall be performed by the Subcontractor with the assistance of workmen under his immediate superintendents, and neither the Subcontract Work nor any portion thereof shall be sublet, assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the Contractor. Any sub-subcontract expressly consented to by the Contractor shall incorporate by reference this Subcontract and the underlying Contract Documents. All sub-subcontractors shall furnish the bonds and insurance required by this Subcontract. The Contractor shall be named as additional insured under each of the required insurance policies and Subcontractor shall furnish evidence of the above as required by this Subcontract. The Subcontractor shall not sell, assign or otherwise dispose of any monies earned or to be earned under this Subcontract without the prior written consent of the Contractor.

## 9. OTHER SUBCONTRACTORS AND CONTRACTORS.

The Subcontractor shall cooperate fully with the Contractor and other subcontractors and contractors employed, either directly or indirectly, by the Principal and/or Owner and working on-site, in accordance with the Prime Contract and Contract Documents. The Subcontractor shall so plan and conduct the Subcontract Work to be performed hereunder as not to interfere with the operations of the Contractor or such other subcontractors and contractors as required by the Prime Contract. The Contractor will not be responsible for any delays or interference resulting from the acts or operations of other subcontractors or contractors employed by the Principal and/or Owner.

## 10. SETTLEMENT OF DISPUTES.

(A)(1) In case of any claim, controversy, or dispute between the Contractor and the Subcontractor INVOLVING THE PRINCIPAL AND/OR OWNER, the Subcontractor agrees to be bound to the Contractor to the same extent that the Contractor is bound to the Principal and/or Owner by the terms of the Contract Documents, including the notice provisions therein, and by any and all preliminary and final decisions or determinations made thereunder by the party, board or court so authorized in the Contract Documents or by law, whether or not the Subcontractor is a party to such proceedings. In case of such dispute, the Subcontractor will comply with all provisions of the Contract Documents, allowing a reasonable time for the Contractor to analyze and forward to the Principal and/or Owner any required communications or documentation. The Contractor will, at its option, 1) present to the Principal and/or Owner, in the Contractor's name, or 2) authorize the Subcontractor to present to the Principal and/or Owner, in the Contractor's name, all of the Subcontractor's claims, and shall answer the Principal and/or Owner's claims involving the Subcontractor's Work, whenever the Contractor is permitted to do so by the terms of the Contract Documents. The Contractor will further invoke on behalf of the Subcontractor, or allow the Subcontractor to invoke, those provisions in the Contract Documents for determining disputes. If such dispute is prosecuted or defended by the Contractor, the Subcontractor agrees to furnish all documents, statements, witnesses, and other information required by the Contractor and to pay or reimburse the Contractor for all costs incurred, including attorneys' fees, in connection therewith. The Subcontractor shall proceed with work as directed by the Contractor pending resolution of any dispute under the terms of the Contract Documents. Failure to proceed with the Subcontract Work pending resolution of a dispute shall be a material breach of Subcontract.

(A)(2) The Subcontractor will participate in and be bound by any dispute resolution terms of the Prime Contract. The Subcontractor agrees that it may be joined as an additional party to an arbitration involving other parties under the Contract Documents. If more than one arbitration is begun under any such agreement and any party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the Subcontractor hereby agrees to consent to consolidation.

(B) Any claim, controversy, or dispute between the Contractor and the Subcontractor NOT INVOLVING THE PRINCIPAL AND/OR OWNER shall be resolved, at the sole option of Contractor, by either: 1) litigation in a court of competent jurisdiction, or 2) arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Notification of any such claim must be asserted in writing to the Contractor within seven (7) days of the Subcontractor's knowledge of the claim, or the same shall be deemed to have been waived. In the case of arbitration, the arbitration shall be held in Charlotte, North Carolina, unless another location is mutually agreed upon. In the case of litigation, the sole and exclusive venue for such actions shall be the state court in Mecklenburg County, North Carolina.

(C) The Subcontractor shall cooperate with the Contractor and provide any documentation required in accordance with the Prime Contract to pursue claims under the Prime Contract. Failure to do so will result in the Contractor's right to seek recovery from the Subcontractor.

(D) No claim, dispute or other matter in controversy shall interfere with the progress of the Subcontract Work, and the Subcontractor shall proceed with the Subcontract Work despite the existence of, and without awaiting the resolution of, any such dispute.

(E) In the event the Contractor is obligated to arbitrate a dispute with the Principal and/or Owner or any other third party and the subject matter of such arbitration, in the Contractor's sole opinion, arises out of or is associated with this Subcontract or the work performed hereunder, the Subcontractor agrees to join in such arbitration proceedings as directed by the Contractor, and the Subcontractor consents to the jurisdiction of such arbitration provision and agrees to be finally bound by any decision which may be rendered in accordance with such arbitration proceedings.

(F) The parties hereto agree that the prevailing party shall be entitled to its reasonable attorneys' fees and costs (including court costs, expert fees, and like expenses) incurred in prosecuting or defending a claim, controversy, or dispute brought in connection with this Agreement and / or related to the Work. The attorneys' fee is to be awarded to the prevailing party and assessed against the losing party so long as there is a finding that there was an unreasonable refusal by the losing party to fully resolve the matter which constituted the basis of the suit or the basis of the defense. For purposes of this section, "prevailing party" is a plaintiff or claimant who obtains a judgment or award of at least fifty percent (50%) of the monetary amount sought in a claim or is a defendant or respondent against whom a claim is asserted which results in a judgment or award of less than fifty percent (50%) of the amount sought in the claim defended.

(G) Notwithstanding any other provision of this Subcontract, the Contractor and Subcontractor waive consequential damages against one another for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver does not apply to liquidated damages, which are not deemed to be consequential damages under this Subcontract.

## 11. WARRANTIES AND PERFORMANCE GUARANTIES.

The Subcontractor warrants the Subcontract Work hereunder to the Contractor on the same terms, and for the same period, as the Contractor warrants the work to the Principal and/or Owner under the Contract Documents; and, with respect to the Subcontract Work, the Subcontractor shall provide all warranty and performance obligations and responsibilities assumed by the Contractor under the Contract Documents.

## 12. PAYMENT FOR LABOR AND SUPPLIES.

The Subcontractor shall promptly make payments to all persons supplying the Subcontractor with labor, materials, equipment and/or supplies used or to be used in the prosecution of the Subcontract Work or in connection therewith. Any payments not so made by the Subcontractor when earned or due may be made by the Contractor and the amounts thereof deducted from any monies at any time earned or due the Subcontractor under this Subcontract or any other contract between the Contractor and the Subcontractor. The Subcontractor will receive all payments made by the Contractor and will hold such payments in trust to be applied first to the payment of any persons furnishing labor, materials or services for the Subcontract Work.

## 13. LIENS.

In the event that liens or claims against any party hereto and/or the Contractor's surety are filed by anyone in relation to the labor, material, and/or equipment being furnished to or by the Subcontractor for the Subcontract Work hereunder, the Subcontractor agrees to: (A) have the same discharged, by posting a bond with the appropriate authorities, or otherwise; and (B) within five (5) days of notice from the Contractor, hold the Contractor, the Contractor's surety, and the Principal and/or Owner harmless from any loss, cost and/or expense, including without limitation, attorneys' fees, incurred by either or both of them resulting from such lien. The Subcontractor must also defend, indemnify and hold harmless the Contractor for all costs, expenses, and damages arising from said liens or claims. In the event of

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**13. LIENS.** (continued from previous page)

such lien or claim, the Contractor may select counsel of its choosing and the Subcontractor shall be responsible for all costs, expenses and attorneys' fees incurred in defending against such lien or claim. If the Subcontractor fails to discharge any lien or encumbrance as described herein, the Contractor shall have the right to deem the Subcontractor in default and terminate the Subcontract.

The Subcontractor shall furnish to the Contractor, if requested, evidence of payment of all bills and expenses incurred by the Subcontractor for labor, services, equipment and materials used by the Subcontractor, and liabilities incurred by Subcontractor in any way associated with the Work; and written releases on forms acceptable to the Contractor from all persons, firms or corporations that may have furnished to the Subcontractor, any services, equipment and materials associated with the Work, and written releases of liens from all persons, firms and corporations that may have in any way had any dealings and agreements in connection with the Work under this Subcontract. In the event the Contractor requests such information, provision of the requested documentation by the Subcontractor shall be a condition precedent to payment by Contractor.

**14. DEFAULT.**

The Contractor may elect, in addition to or in lieu of its related rights under Section II above, to declare Subcontractor to be in default if Subcontractor shall fail to (a) commence the Subcontract Work within the specified time, (b) diligently prosecute the Subcontract Work continuously with sufficient workmen, equipment and/or materials to ensure its completion within the time herein specified for completion, (c) perform the Subcontract Work according to the provisions of the Prime Contract, the Contract Documents, or this Subcontract, (d) keep currently paid Subcontractor's laborers, subcontractors and suppliers involved with the Subcontract Work hereunder, (e) remain solvent, (f) perform or observe any covenant, condition or term of this Subcontract or otherwise fail to carry on the Subcontract Work in a manner acceptable to the Contractor. Contractor shall give written notice of the default. If the Subcontractor, within a period of forty-eight (48) hours after Contractor provides such notice, shall not cure its performance, then the Contractor shall have full power and authority to pursue all available remedies, including, but not limited to: (1) supplying workers, materials, equipment and facilities as the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor; (2) contracting with one or more additional contractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Subcontract Work, and charge the cost to the Subcontractor as provided in (1) above; (3) withholding any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Contractor; and (4) terminating the Subcontract.

The Subcontractor agrees to provide the Contractor access to information regarding the Subcontract Work in the Subcontractor's possession and to assign, if the Contractor requests, subcontracts with suppliers, equipment dealers and subcontractors. Neither by the taking over of the Subcontract Work nor by its completion in accordance with the terms of this provision shall the Contractor forfeit its right to recover damages from the Subcontractor or from the Subcontractor's surety for the Subcontractor's failure to complete the Subcontract Work or for the Subcontractor's delay in such completion.

Should the expense incurred by the Contractor in taking over and completing the Subcontract Work exceed the sum that would have become payable to the Subcontractor, then the Subcontractor and the Subcontractor's surety shall be liable to the Contractor for the amount of such excess. Upon taking over of the Subcontract Work by the Contractor, as herein provided for, no further payment shall be made to the Subcontractor until the Subcontract Work is completed, and any monies due or that may become due the Subcontractor under this Subcontract will be withheld and may be applied by the Contractor to the payment for labor, materials, supplies, equipment and/or other subcontractor(s) and/or suppliers used in the prosecution or completion of the Subcontract Work and/or to the payment of rental charges on equipment used therein, or to the payment of any excess cost to the Contractor of completing the Subcontract Work.

The Subcontractor shall be liable to the Contractor for any resulting increase in the costs to the Contractor to complete the Subcontract Work, as well as an administrative fee equal to fifteen percent (15%) to cover home office overhead. The Subcontractor shall pay, and Contractor shall be entitled to set off from amounts due under this Subcontract, any sums due to the Contractor under any other agreement or contract, or on account of any direct or indirect damages suffered by the Contractor by reason of any breach by the Subcontractor of any such other agreement or contract. The Subcontractor shall be liable to the Contractor for reasonable attorneys' fees incurred as a result of the Contractor's completion of work under this section.

**15. EXTENSION OF TIME.**

No extension of the time for completion of the Subcontract Work or any part thereof will be granted to the Subcontractor for delays or suspensions of the Subcontract Work (a) caused by the fault or negligence of the Subcontractor, or (b) unless the Principal and/or Owner shall grant the Contractor an equal extension of time for such delays or suspensions. No such extension of time will be granted to the Subcontractor that will render the Contractor liable for any penalty or damages under the Prime Contract. The Contractor's acceptance of the work not provided according to the Project Schedule shall not act as a waiver, under any circumstances, of the Subcontractor's failure to provide work in accordance with the Project Schedule.

**16. CLAIMS FOR EXTRA WORK OR DAMAGES.**

The Contractor and Subcontractor agree that the Contractor may at any time, on written order, without notice to the Subcontractor's surety and without invalidating the Subcontract, make changes in the Subcontract Work to be performed by the Subcontractor. The Contractor will pay for extra Subcontract Work performed and materials furnished by the Subcontractor, under written authorization by the Contractor, Principal and/or Owner, and the Architect/Engineer, an amount mutually agreed upon by the Subcontractor, Contractor, and Architect/Engineer or Principal and/or Owner. If no agreement for amount to be paid is reached, the Subcontractor shall receive payment for its work, as and when the Contractor is paid therefore by the Principal and/or Owner and in accordance with the Prime Contract. Any claim by the Subcontractor for extra work and/or materials not so authorized, or for damages of any nature whatsoever, shall be deemed waived by the Subcontractor unless written notice thereof is given the Contractor within seven (7) days after the date of its origin, or in accordance with the Contract Documents if the time for notification therein is less. If no agreement is reached as to amounts claimed by the Subcontractor for extra work or if a dispute exists as to the Subcontractor's entitlement to make a claim for extra work, the Subcontractor shall proceed without delay to complete said work which is in dispute and shall maintain all cost records related to said work.

**17. UNKNOWN AND/OR CHANGED CONDITIONS.**

If, in the performance of the Subcontract Work, the Subcontractor finds latent, concealed or subsurface physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist, and not generally recognized as inherent in the kind of work provided for in this Subcontract, the Subcontractor must notify the Contractor immediately. In such event, the Subcontract Price will be adjusted in accordance with the Prime Contract and such adjustment will be limited to the Subcontractor's share of the adjustment paid by the Principal and/or Owner.

**18. DELAYS, SUSPENSIONS & EARLY TERMINATION BY PRINCIPAL AND/OR OWNER.**

It is understood and agreed that the Subcontractor shall comply with all instructions given to the Contractor by or on behalf of the Principal and/or Owner that affect the Subcontract Work hereunder, including without limitation, any such instruction requiring the Contractor and the Subcontractor to delay, suspend or terminate the prosecution of the Subcontract Work provided for herein, and that the Subcontractor shall not be entitled to any extra compensation or damages because of any such delay, suspension or termination that is not specifically allowed and paid for by the Principal and/or Owner.

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## 19. TERMINATION FOR CONVENIENCE.

The Subcontractor agrees that the Contractor shall have the right to terminate this Subcontract for any reason whatsoever by providing the Subcontractor with a notice of termination, to be effective forty-eight (48) hours following receipt by the Subcontractor of such notice, to be sent by hand delivery or registered or certified mail, return receipt requested. A termination for default under other provisions of this Subcontract shall, if made in error, be treated as a termination for convenience under this clause.

Whenever the Subcontractor is terminated for convenience under this clause, or is wrongfully terminated under any other clause of this Subcontract, the Subcontractor shall only be entitled to one of the following two options, at the sole discretion of Contractor: (1) the actual direct costs of all labor, material and subcontractors expended by the Subcontractor, plus profit and overhead not to exceed twelve percent (12%) of the foregoing, plus the cost of equipment (including profit and overhead) which will be limited to seventy-five percent (75%) of the applicable rates shown in the "Rental Rates & Specifications" compiled by the Associated Equipment Distributors current at the time the equipment was used, pursuant to the Subcontractor's obligations under this Subcontract prior to the effective date of the termination, or (2) payment for work actually provided in accordance with the terms of this Subcontract. In no event shall Subcontractor be entitled to recover lost profits or sums for work not provided.

In no event shall the Subcontractor be entitled to assert a claim in quantum meruit or any other measure of damages other than that stated herein. In the event of a disagreement as to the amount due the Subcontractor upon such termination, the dispute shall be decided in accordance with Section 10 of these Subcontract Standard Conditions.

## 20. BREACH OF OTHER CONTRACTS.

Should there be a breach by the Subcontractor of one or more other contracts now or hereafter existing between the Contractor and the Subcontractor, or with any affiliated person, firm or corporation of the Subcontractor concerning this or any other contract, such a breach by the Subcontractor shall, at the option of the Contractor, be considered a breach of all contracts and, in that event, the Contractor may terminate any or all of the contracts so breached, or may withhold monies due or to become due the Subcontractor on any such contracts, and apply the same towards payment of any damages suffered by the Contractor on that or any other contracts.

**21. SAFETY.** The Subcontractor accepts complete responsibility for the health and safety of its employees.

(A)(1) The Subcontractor is solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Subcontract Work. The Subcontractor shall take actions to prevent injury, loss or damage to persons or property located on or adjacent to the Subcontract Work. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Principal and/or Owner, including, but not limited to, requirements imposed by the Subcontract and the Prime Contract.

(A)(2) The Subcontractor shall give prompt written notice to the Contractor of any accident involving bodily injury, any property damage, or any occurrence that could have resulted in serious bodily injury, whether or not such an injury was sustained

(A)(3) In the event that the Subcontractor or any of its employees, subcontractors, or agents fail to comply with any health and safety requirements contained herein or if the Contractor deems any part of the Subcontract Work unsafe, the Contractor may require the Subcontractor to stop work and/or remove any noncompliant employees, subcontractors, or agents.

(A)(4) Should the Subcontractor fail to comply with the above or to maintain his work area and equipment in a safe operating condition and/or should the Subcontractor's operation be characterized by frequent injuries to workmen, then at the option of the Contractor, this Subcontract may, upon written notice to the Subcontractor, be canceled and the Subcontract Work may be completed by the Contractor in accordance with Section XIV of these Subcontract Standard Conditions without liability to the Contractor or prejudice to any of its legal or equitable rights hereunder, and the Subcontractor shall be required to immediately remove his equipment and employees, subcontractors and agents from the site of Subcontract Work, if so directed by the Contractor.

(B) **SUBSTANCE ABUSE:** The Subcontractor shall advise its employees, the employees of its subcontractors, and agents that the Contractor is committed to make every effort to institute and maintain a safe, drug and alcohol free workplace. In connection with such, the Subcontractor agrees that its substance abuse program will minimally consist of pre-employment, for cause and post-accident testing procedures that are in compliance with statutes and regulations governing the administration of such test. The Subcontractor agrees that:

- (1) When requested, the Subcontractor will provide written documentation that its employees have been properly screened for controlled substances no longer than 30 days prior to commencing work.
- (2) When required, the Subcontractor, its employees, subcontractors and agents will submit to for cause testing when reasonable suspicions exist to indicate that their health or ability to perform the work safely may be impaired.
- (3) When requested, the Subcontractor agrees to provide certified written confirmation of results from any such substance abuse test, for which the Subcontractor will obtain written consent from its employees to release results to the Contractor.
- (4) When a charge, claim, suit or otherwise is made against the Contractor due to the Subcontractor, its employees, subcontractors and agents being impaired, the Subcontractor agrees to defend, hold harmless, and indemnify the Contractor.

(C) **WARNING SIGNALS, BARRICADES, ETC.** The Subcontractor shall provide, erect and maintain proper warning signals, signs, lights, barricades, and fences, and shall take all other necessary precaution for the protection of the Subcontract Work and the safety of the public.

## 22. ENVIRONMENTAL MATTERS.

If the Subcontractor uncovers, encounters or suspects the presence of any asbestos, PCB's, petroleum or any other hazardous waste or radioactive material ("Hazardous Condition"), the Subcontractor shall immediately 1) stop all work in connection with such Hazardous Condition and in any area affected thereby, and 2) notify the Principal and/or Owner, Architect/Engineer and Contractor. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Contractor, Principal and/or Owner, and Architect/Engineer from and against all claims, costs, losses and damages arising out of or resulting from the Subcontractor's failure to immediately stop work and notify other parties upon discovery of a Hazardous Condition as required above. The Subcontractor shall be responsible for any Hazardous Conditions created with materials brought to the site by the Subcontractor, its employees, subcontractors, agents or anyone else for whom the Subcontractor is responsible.

## 23. PAYMENT.

(A) **PARTIAL PAYMENT** for Subcontract Work shall be made by the Contractor as and when it is paid for by the Principal and/or Owner, and will equal the value of the Subcontract Work performed by the Subcontractor, subject to Subsection 23 (B) below, according to: 1) the Architect/Engineer's and/or the Principal's and/or Owner's estimate of the quantity(s) of said Subcontract Work so performed, and 2) the price(s) herein specified, less the sum of previous payments and less retainage, at the option of the Contractor, of (a) ten percent (10%) of the value of the work performed hereunder, or (b) a percentage equal to the percentage of the value of the total work performed on the entire Project by or on behalf of the Contractor that is being retained by the Principal and/or Owner; provided, that if the Subcontractor is indebted to the Contractor under this or any other contract or on any other project, or to anyone else for cash advances, supplies, materials, equipment, rentals, or other proper charges against the work hereunder or against the work under any other contract between the Contractor and the Subcontractor,

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**23. PAYMENT.** (continued from previous page)

the amount of such indebtedness may be deducted from any payment or payments made or to be made under this provision or from any funds due or to become due under any other contract between the Contractor and the Subcontractor. Partial payments shall be paid within thirty (30) days after receipt of payment to the Contractor from the Principal and/or Owner subject to other requirements of this Subcontract.

(B) The Contractor shall have the right to withhold, adjust or reduce any partial payment(s), whether based on unit prices or on payments to the Contractor by the Principal and/or Owner, in order to ensure that the remaining payments (including retainage) due the Subcontractor under this Subcontract will be sufficient to pay any and all costs required to complete the Subcontract Work.

(C) UPON THE COMPLETION OF THE PRIME CONTRACT and payment therefore in full to the Contractor by the Principal and/or Owner, the Subcontractor shall be paid within thirty (30) days thereafter the remaining amount due it under this Subcontract, except that any remaining amount due the Subcontractor may have set-off or applied against it any sums due the Contractor by the Subcontractor under this Subcontract or any other agreement between the Contractor and the Subcontractor or by reason of the breach of either.

(D) All prior partial payments shall be subject to correction in the final payment; provided, that if, on completion of the Subcontract Work by the Subcontractor and prior to the completion of the Prime Contract as a whole, the Subcontractor shall receive full payment for the Subcontract Work according to the computations of the Principal and/or Owner or Architect/Engineer, any changes thereafter made in said computations shall be binding upon the Subcontractor. Final payment to the Subcontractor as herein provided shall release the Contractor from any further obligation whatsoever in respect to this Subcontract. It is an express Condition Precedent for receipt of final payment that the following have been satisfied:

- (1) The completion and acceptance of the Work by the Contractor, the Owner, Principal and/or Architect;
- (2) Upon request, the Subcontractor has provided evidence satisfactory to the Contractor that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or items performed, furnished, or incurred in connection with the work; and
- (3) Receipt of all documents, drawings, manuals, warranties or other items required under the Contract Documents.

(E) The Subcontractor shall, upon request by the Contractor, as a Condition Precedent to his entitlement to receive any progress or final payment, execute and deliver to the Contractor a full and valid release and complete discharge of the Contractor, Architect/Engineer and Principal and/or Owner of and from any and all claims and demands whatsoever for all matters growing out of, or in any manner connected with or founded upon, this Subcontract or the Subcontract Work contemplated hereby, and the Subcontractor shall furnish to the Contractor satisfactory assurances, including sworn affidavits if requested, that all bills for labor, services and materials incurred by him have been paid.

(F) The estimates and calculations made by the Principal and/or Owner and the Architect/Engineer as to the amount of Subcontract Work performed hereunder by the Subcontractor shall be final and binding as between the parties hereto, and shall conclusively establish the amount of work done by the Subcontractor hereunder. It is understood and agreed that the Subcontractor shall receive no compensation for any work done by him which is not approved and accepted by the Principal and/or Owner and the Architect/Engineer; provided, that if the Subcontractor, by written direction of the Contractor, performs any work or furnishes any services, supplies or materials not provided for in the Contract Documents, he shall be paid therefore as provided herein.

(G) PAYMENTS BASED ON UNIT PRICES. If the Subcontract Price is based on unit prices for work, payment to the Subcontractor will be based on the unit prices shown in this Subcontract. All unit prices will include all direct costs, indirect costs, home office overhead, profit and any other costs required to complete the Subcontract Work. If quantities are given, they are subject to change and Subcontractor will be paid as follows: a) If payment by the Principal and/or Owner to the Contractor for work in this Subcontract is based on quantities of work performed, then the Subcontractor will be paid for the same quantity(s) which the Principal and/or Owner pays the Contractor, less any amounts performed by the Contractor or others, or b) if the Contractor is not paid based on quantities of work performed, then the Subcontractor will be paid for actual quantities performed by the Subcontractor and necessary in performance of the Subcontract Work.

The Contractor does not guarantee or warrant the accuracy of anticipated quantities. No adjustment will be made in unit prices for underrun or overrun in quantities unless payment to the Contractor by the Principal and/or Owner is adjusted. In such case, adjustments will be limited to the amount of adjustment given to the Contractor by the Principal and/or Owner.

(H) In consideration of the promises, covenants and agreements of the Subcontractor herein contained, and the full, faithful and prompt performance of this Subcontract and the plans and specifications constituting a part hereof, the Contractor agrees to pay the Subcontract Price to the Subcontractor and the Subcontractor agrees to receive and accept the Subcontract Price as full compensation for doing all Subcontract Work and furnishing all materials, supplies, etc. contemplated and embraced in this Subcontract.

(I) Notwithstanding the above, it shall be a Condition Precedent to any liability of the Contractor to the Subcontractor for progress or final payments for any work performed by the Subcontractor on the Project that the Contractor first be in receipt of payment from the Principal and/or Owner for such work. If the Principal and/or Owner has not paid the Contractor for work performed by the Subcontractor, for whatever reason, the Subcontractor agrees that the Contractor shall not be liable to, or indebted to, the Subcontractor on account of such work. The Subcontractor assumes and accepts the risk that it will not be paid for work performed by it in the event that the Contractor, for whatever reason, is not paid by the Principal and/or Owner for such work, and the SUBCONTRACTOR HEREBY ACKNOWLEDGES THAT IT RELIES PRIMARILY FOR PAYMENT FOR WORK PERFORMED BY IT ON THE CREDIT OF THE PRINCIPAL AND/OR OWNER AND NOT OF THE CONTRACTOR.

(J) Without the prior written consent of the Contractor, rentals paid or incurred for equipment used by the Subcontractor shall not exceed seventy-five percent (75%) of the applicable rates shown in the "Rental Rates & Specifications" compiled by Associated Equipment Distributors current at the time the equipment is used. The Subcontractor shall not purchase materials to be used in the prosecution of the Subcontract Work or in connection therewith in excess of the quantity required. If the Subcontractor does not furnish performance or payment bonds, the Subcontractor shall, upon demand, submit payrolls, purchase orders and rental agreements to the Contractor for approval in advance.

**24. APPLICABLE LAW.**

This Subcontract shall be interpreted in accordance with the laws of North Carolina, and North Carolina law shall govern any dispute under this Subcontract or between the parties hereto related to the Work. Any dispute hereunder or in connection herewith between the parties hereto shall be instituted, prosecuted, or arbitrated (at the Contractor's sole option, as provided in Section 10 of this Subcontract) in Charlotte, North Carolina, and in the case of litigation, the state court located in Mecklenburg County, North Carolina shall be the sole and exclusive venue for all actions.

**25. MISCELLANEOUS PROVISIONS.**

(A) The Subcontractor agrees to be bound by and, at its own costs, comply with, all federal, state and local laws, ordinances and regulations (the Laws) applicable to the Subcontract Work, including, but not limited to, any such Laws relating to the health and safety of any person; the environment; hazardous substances; labor and employment; immigration; disadvantage business enterprises; and civil rights and all other Laws with which the Contractor must comply. The Subcontractor shall be liable to the Contractor, the Principal and/or Owner, and the Architect/Engineer for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees, subcontractors and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties or corrective measures.

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**25. MISCELLANEOUS PROVISIONS.** (continued from previous page)

(B) The Subcontractor shall be responsible for all payments of taxes, contributions and/or premiums payable on his employees or on his operations under workers' compensation laws, unemployment compensation laws, the federal Social Security Act, health and welfare benefit plans, gross business taxes, sales and use taxes and any other taxes, contributions and/or premiums which become payable by operation of law or contract, including contributions payable by the employees, and shall save the Contractor harmless from all liability, loss and expense resulting from the Subcontractor's failure to comply with all requirements of such laws or contracts. The Subcontractor agrees to comply with all rules and regulations at any time applicable to this provision, including licensing requirements for the location of the Subcontract Work.

(C) The Subcontractor will provide the Contractor with satisfactory proof as may be required by the Contractor showing compliance by the Subcontractor with laws and regulations of the jurisdiction in which the Subcontract Work is performed relating to withholding of income taxes from wages of employees.

(D) If the Contract Documents or any laws or regulations require approval of the Subcontract by any regulatory agency or the Principal and/or Owner, then the Subcontract will become void and of no effect if the Subcontract is not so approved.

**26. DAMAGES FOR DELAY IN COMPLETION.**

It is hereby expressly affirmed that TIME IS OF THE ESSENCE FOR THIS SUBCONTRACT, and the Subcontractor agrees to perform the Subcontract Work hereunder within the time and in the manner specified, or within the time of any extensions thereof as may be granted to him, and the Subcontractor shall be liable for any and all damages suffered by the Contractor due to failure of the Subcontractor to perform the Subcontract Work or any part thereof within the time specified herein, including but not restricted to (a) any direct costs, job overhead, home office overhead, and attorneys' fees and/or (b) any penalty or liability for damages incurred by the Contractor from the Owner because of said failure.

Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation or damages for any delay, destruction, hindrance or interference to the Subcontract Work except to the extent the Contractor has recovered a corresponding cost reimbursement, compensation or damages from the Owner and/or Principal pursuant to the Contract Documents for such delay, obstruction, hindrance or interference, and then only to the extent of the amount, if any, which the Contractor shall recover on behalf of the Subcontractor and is actually received from the Owner on the account of such delay, obstruction, hindrance or interference.

**27. SEVERABILITY & WAIVER.**

The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. In the event that an arbitrator or court of competent jurisdiction determines that any term or provision of this Subcontract is unreasonable or unenforceable as written, the tribunal shall limit the application of any such term or provision or otherwise modify such term or provision and proceed to enforce the term or provision as so limited or modified to the maximum extent permitted by law. The provisions of this Section apply, without limitation, to the indemnity obligations of this Subcontract.

The failure of the Contractor to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. The Contractor does not waive any rights under this Subcontract unless such waiver is in writing and signed by Contractor.

**28. BINDING EFFECT.**

Subject to the provisions of Section VIII hereof, this Subcontract shall bind the heirs, executors, administrators, successors and assigns of the parties hereto.

**29. ENTIRE AGREEMENT.**

It is distinctly understood and agreed by the Subcontractor that this Subcontract is made for the consideration herein named, and that the Subcontractor has, by examination, satisfied himself as to the nature and location of the Subcontract Work, the character, quantity and kind of materials to be encountered, the character, kind and quantity of equipment needed during the prosecution of the Subcontract Work, and the location, condition and other matters which can in any manner affect the Subcontract Work. No oral agreement with any agent, either before or after the execution of this Subcontract, shall affect or modify any of the terms or obligations herein contained, and this Subcontract shall be conclusively considered as containing and expressing all of the terms and conditions agreed upon by the parties hereto. No changes, amendments or modifications of such terms or conditions shall be valid or of any effect unless reduced to writing and signed by the parties hereto.

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