

INSITUFORM TECHNOLOGIES, LLC
Short-Form Subcontract Terms & Conditions
(Subcontract Work Valued Under \$10,000)

These terms and conditions govern the provision of goods and services by Subcontractor to Insituform Technologies, LLC (“Contractor”). All terms and conditions contained in any other oral or written communication, including Contractor’s request for proposal(s), request for quote(s), call out form(s) or purchase order(s) which are different from or in addition to the terms and conditions herein are hereby rejected and will not be binding on Contractor, whether they would materially alter this document. All prior proposals, negotiations, and representations, if any, are merged herein.

Documents. The term “Contract Documents” when used herein includes all portions of the Agreement between Contractor and Owner (except private financial data), herein called the “Prime Contract”, and all Advertisements for Bids, Instructions to Bidders, Bid Documents, Addenda, Plans, Drawings, Specifications, General and Special Conditions, Guarantees, and all other documents forming or by reference made a part of such Agreement, which are incorporated by reference and expressly made a part hereof. Where any provision of the Prime Contract between Owner and Contractor is inconsistent with any provision of this Subcontract, the provisions requiring the highest standard, strictest performance, or shortest time for notice shall govern. Subcontractor represents that it has examined the Contract Documents and desires to perform certain of the work in accordance with the Contract Documents and as herein provided, and represents that it is licensed and qualified to do such work. Any error, ambiguity, inconsistency or omission therein, of which Subcontractor had, or should have had knowledge may not be a basis for an increase in the Subcontract Amount or time to perform the Subcontractor’s Work or any other relief under the Contract Documents. If inconsistencies or omissions exist in the Contract Documents, of which Subcontractor did not have, and should not have had knowledge before execution of this Agreement, it shall be the duty of the Subcontractor to notify Contractor in writing thereof within seventy-two (72) hours of the discovery of such inconsistencies or omissions. Upon receipt of said notice, Contractor shall instruct Subcontractor as to the actions to be taken.

Performance. Subcontractor shall furnish all the labor, materials, supplies, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools and all other things necessary to perform and shall perform all the work for the construction and completion of the applicable part(s) of the work of the Contract Documents, hereafter “the Work” or “Subcontractor’s Work”) and as may be supplemented by additional requirements of Contractor. Subcontractor shall also perform all work incidental thereto which is necessary or required in order that all such Work covered by the Subcontract will be complete, in strict accordance and full compliance with the terms of the Contract Documents and this Subcontract and as required by Contractor. Subcontractor shall execute each part of the Work in a workmanlike and substantial manner. Subcontractor represents that it has the machinery, equipment, personnel and experience to perform the Work within the time allotted in the Contract Documents and Contractor’s Project Schedule. Subcontractor accepts sole and exclusive responsibility for the Work covered hereby, shall provide continuous supervision for such Work during the progress thereof at the Project, and no advice, recommendations or assistance that Owner or Contractor may give to Subcontractor shall operate to relieve Subcontractor from complete responsibility for such Work. The obligation of Subcontractor to perform all Work and furnish all material covered by the Subcontract under the direction and to the satisfaction of Contractor, Owner and Architect is absolute and without exception. Subcontractor shall conform to and abide by any additional specifications, drawings or explanations furnished by Contractor and/or the Owner to detail and illustrate the Work to be done at no additional cost, unless such cost is agreed to in writing in advance.

Commencement and Schedule. Subcontractor shall begin work as soon as instructed to do so by Contractor and shall carry the same forward promptly, efficiently and at a speed as determined by Contractor and that will not damage or delay Contractor. Subcontractor shall cooperate fully with all others working on the Project and shall not permit or commit any act which interferes with others. TIME IS OF THE ESSENCE, and all of the Work of Subcontractor shall be fully and properly completed within the time required by the Contract Documents, or such shorter period of time as Contractor shall schedule or deem necessary so as to permit Contractor to complete and fulfill timely all of its obligations under the Contract Documents. Subcontractor shall at all times supply sufficient and adequate tools, equipment, properly qualified supervisory personnel and workers, and materials and supplies of proper quality to prosecute said Work efficiently and promptly, and in accordance with the schedule and sequence given it from time to time. Agreements, contracts or obligations with or owed to third parties shall in no way excuse performance of this Subcontract.

Relationship Of The Parties. Subcontractor shall be and is an independent contractor and assumes all of the rights, obligations and liabilities applicable to it as such. The Subcontractor shall have responsibility and control over the performance of the Subcontractor’s Work, including the construction means, methods, techniques and sequences for coordinating and completing the various portions of the Work.

Subcontractor Obligations.

- (a) **Authorized Representative.** The Subcontractor shall designate one or more persons acceptable to the Contractor who shall be the Subcontractor’s Authorized Representative(s) both on-site and off-site. Such authorized representative(s) shall be the only person(s) to whom the Contractor shall issue written instructions, orders or directions, except in an emergency. The Authorized Representatives shall attend meetings which may be held at such place and on such intervals as the Contractor designates and shall have the authority to commit the Subcontractor to actions as agreed in these meetings.
- (b) **Coordination.** Subcontractor shall coordinate the Subcontractor's Work with the work of Contractor, other subcontractors, and the Owner's separate contractors or employees, if any, so that no delays, obstruction, disruption or interference will occur in completion of any part or all of the Project or Contractor’s work or of the work of other of Contractor’s subcontractors, Owner’s separate contractors or employees. If any part of the Subcontractor’s Work is dependent upon work performed by other persons or entities, other than Subcontractor, Subcontractor shall inspect and promptly report to Contractor any problem(s) and/or defect(s) that render such work unsuitable for Subcontractor’s proper performance. Subcontractor’s silence shall constitute approval of such other work as fit, proper and suitable for Subcontractor’s performance of the Subcontract Work, and Subcontractor shall be liable for the costs to replace, modify or correct, or for the correction, replacement or modification at Subcontractor’s sole cost, of any Subcontractor Work and any other work as a result of Subcontractor’s failure to give such prompt notice to Contractor.

- (c) **Project Records.** Subcontractor shall (i) maintain complete and accurate records related to the Subcontractor's Work (including records of all amounts billable to and payments made by Contractor, and other financial records, in accordance with generally accepted accounting principles), in a format that will permit audit; (ii) retain such records and reasonable billing detail for a period of at least five (5) years from the date of final payment for such Subcontractor's Work (or longer if required by Law or another provision of the Contract Documents); and (iii) permit Contractor and Owner, or their authorized representatives, to inspect and audit Subcontractor's records related to the Subcontractor's Work at any time. Should an audit be requested, Subcontractor shall make available for review any pertinent records and files during normal business hours at no additional charge.
- (d) **Licenses.** The Subcontractor represents and warrants that it possesses all licenses required to perform the Subcontractor's Work. The Subcontractor shall give adequate notices to authorities pertaining to the Subcontractor's Work and, if allowed by local ordinances/practices, secure and pay for all permits, fees, licenses, assessments, inspections, tests and taxes related to the Subcontractor's Work.
- (e) **Federal, State and Municipal Laws.** The Subcontractor shall at all times observe and comply with all Federal and State Laws, local laws, ordinances, codes, orders, decrees and regulations, whether or not specifically listed herein, which in any matter affect the work. Subcontractor agrees as regards: (i) the production, purchase and sale, furnishing and delivering, prices, and use or consumption of materials, supplies and equipment; (ii) the hire, tenure or conditions of employment of employees and their hours of work and rates of payment of their wages, including but not limited to Prevailing Wages or Federal Davis Bacon Wages; (iii) the keeping of records, making of reports and the payment, collection, and/or deduction of Federal, State and Municipal taxes and contributions; and (iv) all other matters in connection with the Subcontract that Subcontractor will keep and have available all necessary records and make all payments, reports, collections and deductions, and otherwise do any and all things so as to fully comply with all Federal, State and Municipal Laws, ordinances and regulations.
- (f) **EEO.** The Subcontractor agrees to comply with the Civil Rights Act of 1964 (as amended), Executive Order Number 11246 and 11395 (as amended) which provides equal employment opportunity and prohibits discrimination because of Race, Color, Religion, Sex or National Origin, and all other laws or regulations, federal, state or local, relating to Civil Rights or Equal Opportunity and to file any and all reports as required. Subcontractor shall immediately notify Contractor of any violation of this Paragraph.
- (g) **OSHA.** Subcontractor agrees to comply with the Occupational Safety and Health Act of 1970, as amended, and to enforce such compliance with its employees through all required training and discipline of its employees, up to and including termination for any violations. Subcontractor further understands and agrees that it is responsible to develop and maintain all written policies, programs and related documents, including employee training, inspection and disciplinary records that are required for compliance by such federal, state and local laws, regulations and standards and to make such documents available for inspection by Contractor upon request.
- (h) **Safety.** Contractor does not undertake to provide Subcontractor, its subcontractors or their employees or representatives with a safe place to work, and Subcontractor is responsible for providing such a safe place to work. Contractor may conduct safety inspections from time to time. Subcontractor shall not be relieved of its duties with regard to the safe performance of the Subcontractor's Work by reason of any conduct, acts or omissions of any inspector, employee or representative of Contractor or Owner, nor shall inspections create any Contractor liability. If the Subcontractor, any of its subcontractors, or any employees of Subcontractor or its subcontractors fail to comply with a request to work in a safe manner or correct an unsafe condition, the Contractor may withhold payments and/or correct the safety deficiency at the Subcontractor's sole expense and/or require that unsafe employee(s) be removed from the Project site.
- (i) **Compliance Fines, Fees or Other Penalties.** Subcontractor shall be liable for all fines, fees or other penalties assessed against Contractor, Subcontractor or any other party if such penalty is assessed due to Subcontractor's work, negligence, or other acts or omissions. Such fine, fee or penalty may be withheld from Subcontractor's next pay application, or, in the event the amount(s) exceed Subcontractor's subcontract balance shall be due and owing by Subcontractor to Contractor immediately.
- (j) **Workmanship.** All workmanship shall be first-class and of the best quality. All materials and equipment 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 such materials and equipment as may be expressly provided in the Contract Documents to be otherwise.
- (k) **Subcontractor to Protect Own Work.** Subcontractor assumes the entire responsibility and liability for all work, supervision, labor and materials provided hereunder, whether or not erected in place, and for all scaffolding, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of Subcontractor's Work by the Owner as described in the Contract Documents. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefor, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's sole cost.
- (l) **Warranties.** Subcontractor warrants the Subcontractor's Work against all deficiencies and defects in materials and workmanship, and further warrants that the Subcontractor's Work shall strictly comply with the Contract Documents. Without cost to Contractor, Subcontractor shall promptly address and correct to the satisfaction of Contractor and Owner any deficiencies and defects and any other non-compliance issues which appear during the warranty period(s) established in the Contract Documents. If no specific warranty is set forth in the Contract Documents, then the warranty period shall be a period of one (1) year from the date of substantial completion of the entire Project. This warranty will survive any acceptance, payment and use of any of the Subcontractor's Work, as well as the expiration, termination or completion of this Subcontract. This warranty is in addition to all other warranties and remedies, express and implied, under law, equity or in the Contract Documents. The Subcontractor agrees to execute any special guarantees or warranties required in the Contract Documents for the Subcontractor's Work. Upon request, Subcontractor shall assign to Contractor and Owner all warranties and guarantees provided by its subcontractors, vendors and suppliers.

(m) **Assignment.** Subcontractor may not assign or otherwise transfer any of its rights or obligations under this Subcontract without the prior written consent of Contractor, which approval shall not be unreasonably withheld. Any delegation or assignment of Subcontractor's work, duties, rights, interests, obligations or accounts receivable made by the Subcontractor of this Agreement or any part thereof without the prior written consent of Contractor's duly authorized representative shall be void. Should a third party take an assignment of Subcontractor's alleged "account receivable" by any method, it is expressly understood that Contractor shall have the right to negotiate directly with any subcontractors or suppliers (of any tier) to Subcontractor any claims (written or oral) made by those parties with respect to labor, services or materials provided to the project. Further, in such an event, Subcontractor's "account receivable" for the project shall not be calculated, or due and owing, until such time as Contractor has fully negotiated and (at Contractor's sole option) paid any and all subcontractor or supplier claims. Subcontractor's final "account receivable", for which a third party may take an assignment, shall reflect a deduction for all amounts paid by Contractor to Subcontractor's subcontractors and suppliers, and all attorneys' fees, costs and expenses incurred by Contractor in responding to, defending against or negotiating those claims.

Progress Payments. Subcontractor shall submit to Contractor applications for progress payments in a form and within time periods as directed by Contractor. Payment shall be made only for actual Work performed to the satisfaction of Owner and Contractor. Each billing shall be supported by evidence satisfactory to Contractor of Subcontractor's payment of the labor, services and materials listed therein, including, upon request, delivery of lien waivers, in a form acceptable to the Owner and/or Contractor, fully executed by Subcontractor's sub-subcontractors and suppliers. If Subcontractor seeks payment for stored materials, and the Contract Documents allows such payment, Subcontractor shall submit documentation satisfactory to Contractor and Owner to verify delivery to an insured warehouse. Subcontractor shall remain responsible for insuring and safeguarding stored materials until actually installed and accepted by Owner. Payment shall be due Subcontractor fourteen (14) calendar days after Contractor receives payment from Owner, less retainage. The amount of retainage shall be the amount retained from the Contractor's payment from Owner for the Subcontractor's Work. Such retainage shall be in addition to such other sums which Contractor has a right to withhold pursuant to this Agreement and the Contract Documents. Retainage is applicable to materials stored on and off-site.

Liquidated Damages. Contractor shall have the right to withhold, as liquidated damages and not as a penalty, out of monies otherwise due to Subcontractor, the sum assessed against Contractor, or the actual cost to Contractor (whichever is greater) per day for each and every day required to complete the Work beyond the time allowed in this Subcontract or the Project Schedule therefor. If the Contract Documents provides for liquidated damages for delay beyond the completion date(s) set forth in the Contract Documents, and such liquidated damages are so assessed, then Contractor may assess the same against the Subcontractor in proportion to the Subcontractor's share of the responsibility for such delay. The amount of liquidated damages assessed shall not exceed the amount assessed against Contractor.

Withheld Payments. Contractor may reject any payment application, in whole or in part, without incurring any obligation for the payment of interest, if the Subcontractor's Work at issue has not been fully and satisfactorily completed or Subcontractor has failed to submit any required documentation, information or other items, or to the extent necessary to protect Contractor from loss or damage for which Subcontractor may be responsible or liable, including the following reasons: (i) Subcontractor's failure to perform the Subcontract's Work as required by the Contract Documents; (ii) unsatisfactory prosecution of the Subcontract's Work; (iii) reasonable doubt that the Subcontract's Work can be completed for the unpaid balance of the Subcontract Amount; (iv) failure of Subcontractor to properly pay for all labor, materials, equipment and supplies furnished in connection with the Subcontract's Work; (v) third party claims filed, or reasonable evidence indicating the probable filing of third party claims, which are the responsibility of Subcontractor; (vi) overpayment by Contractor on any prior payment requests; or (vii) Subcontractor's failure to satisfy any of its other obligations under the Contract Documents. If Contractor rejects a payment application, in whole or in part, Contractor shall provide written notice to Subcontractor stating its reasons for rejecting the payment application, and the actions that need to be taken by Subcontractor in order to receive payment. Notwithstanding anything herein to the contrary, Contractor has the absolute right to withhold and set off from funds otherwise due Subcontractor on this Project any amounts due Contractor from Subcontractor on any other Project and, if Contractor exercises such right of setoff, then Subcontractor hereby waives any lien claims and/or bond rights on this Project as to such amounts so set off.

Sums Tentatively Earned. All payments made by Contractor to Subcontractor are made to and accepted by Subcontractor as trustee for the benefit of Subcontractor's employees, material suppliers and lower tier subcontractors. All payments received by the Subcontractor shall first be used to satisfy any indebtedness owed by the Subcontractor to any persons or entities furnishing labor or materials for use in performing or incorporation into the Subcontractor's Work.

Finals Payment. Before the Contractor shall be required to forward the Subcontractor's application for Final Payment to the Owner, the Subcontractor shall submit to the Contractor: (i) lien and claim releases and all other information required pursuant to this Agreement; (ii) an affidavit that all payrolls, invoices, bills and other indebtedness connected with the Subcontractor's Work have been fully paid or otherwise satisfied or will be from the requested final payment; (iii) consent of surety to final payment, if required; (iv) satisfaction of all required close-out procedures and documentation; and (v) all other data and documentation required by the Contractor or Owner in such form as may be designated by Contractor or Owner. The acceptance by Subcontractor of final payment shall constitute a waiver and release of all claims by the Subcontractor under or relating to this Subcontract, except for those claims made in writing and identified by Subcontractor as unsettled at the time the final payment application is submitted by Subcontractor to Contractor.

Conditions to Payment. Subcontractor hereby acknowledges that all progress and final payments to it are contingent upon Contractor's receipt of payment from Owner, Subcontractor expressly agreeing to accept the risk that it will not be paid for Work performed by it in the event that Contractor, for whatever reasons, is not paid by Owner for such Work. Subcontractor represents that it relies primarily for payment for Work performed on the credit and ability to pay of Owner and not of Contractor, and Subcontractor agrees that payment by Owner to Contractor for Work performed by Subcontractor shall be a condition precedent to any payment obligation of Contractor to Subcontractor. Subcontractor agrees that the liability of the surety on Contractor's payment bond, if any, for payment to Subcontractor, is subject to the same conditions precedent as are applicable to Contractor's liability to Subcontractor.

Indemnity. The work performed by the Subcontractor shall be at the risk of the Subcontractor exclusively. To the fullest extent permitted by law, Subcontractor shall indemnify, defend (at Subcontractor's sole expense) and hold harmless Contractor, the Owner, affiliated companies of Contractor, their parents, joint ventures, representatives, members, designees, officers, directors, shareholders, employees, agents, successors and assigns

(Indemnified Parties), from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorney's fees and costs and consultant fees and costs) (Claims) which arise or are in any way connected with the Work performed, Materials furnished, or Services provided under this Agreement by Subcontractor or its agents. These indemnity and defense obligations shall further apply, whether active or passive. Said Indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of Subcontractor, its employees or agents, whether or not said claims arise out of the concurrent act, omission or negligence of the Indemnified Parties, whether active or passive. Subcontractor shall not be obligated to indemnify and defend Contractor or Owner for claims found to be due to the sole negligence or willful misconduct of Indemnified Parties. Subcontractor's indemnification and defense obligations hereunder shall extend to Claims occurring after this Agreement is terminated as well as while in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully and finally barred by applicable Laws. In any and all claims against the Indemnified Parties, the indemnification obligation under this Agreement shall not be diminished or limited in any way by any limitation on the amount or type of costs, damages, compensation, insurance or benefits payable by or for the Subcontractor or any of its subcontractors under workers' compensation act, disability benefit acts or other employee benefit acts. Subcontractor shall further indemnify, defend and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, demands, suits, actions, judgments, liability, fines, penalties, expenses and costs (including but not limited to attorneys' and expert fees and costs of litigation or arbitration) arising out of or resulting from Subcontractor's actual or alleged failure to perform under this Agreement in accordance with the terms of this Agreement and/or the Contract Documents. Without limitation, the indemnity and defense obligations of Subcontractor under this Paragraph shall apply to all of the following: (i) damages and other delay costs payable by Contractor; (ii) Contractor's increased costs of performance, such as extended overhead and increased performance costs resulting from Subcontractor caused delays or omitted or defective Subcontractor Work; (iii) warranty, rework and repair costs; (iv) liability to third parties, including, but not limited to, other subcontractors of Contractor and Owner's other contractors; (v) excess procurement costs; (vi) costs to obtain a substitute subcontractor or costs incurred to demand and/or ensure performance of Subcontractor's surety in the event of Subcontractor's default; (vii) consultants' and experts' fees; and (viii) attorneys' fees and related costs. Subcontractor's actual or alleged failure to perform shall include the actual or alleged failure of Subcontractor's lower-tier subcontractors and suppliers to perform.

Lien and Bond Claims. Subcontractor shall fully protect, indemnify, defend and hold harmless Contractor and Owner from and against any and all liens, claims, security interests or conditional bills of sale (hereinafter collectively referred to as "liens") of laborers, mechanics, or materialmen of Subcontractor and subcontractors of Subcontractor. If at any time there shall be evidence of any lien for which, if established, Owner or Contractor might become liable, which in any way relates to or arises out of, or is claimed in any way to relate to or arise out of, the Work to be performed by Subcontractor, Contractor shall have the right to retain, out of any payments then due or thereafter to become due, an amount sufficient to completely indemnify and protect Contractor and Owner against such lien.

Insurance. Subcontractor shall maintain the following minimum limits of liability: (i) Worker's compensation and employer's liability insurance with limits of \$1,000,000, or the statutory minimum, whichever is greater; (ii) commercial general liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate; (iii) automobile liability insurance with minimum limits of \$1,000,000 per occurrence. Subcontractor shall furnish a Certificate of Insurance, evidencing the types and amounts of its coverages, prior to commencing work. Subcontractor agrees to name Contractor and Owner (and others as requested by Contractor) as an additional insured on Subcontractor's liability insurance policy. Subcontractor and Contractor agree that the naming of Contractor or other parties as an additional insured is intended to apply to claims made against the additional insured due to the negligence of Subcontractor.

Delays. Should Subcontractor be delayed in the performance of its Work, Subcontractor may be entitled to an extension of time for performing and completing the Work covered by this Subcontract but only to the extent actually allowed to Contractor by Owner or its representatives under the terms of the Contract Documents. Subcontractor shall indemnify, defend and save harmless Contractor from all loss, cost, damage, liability and expense which Contractor may sustain or incur by reason of any delays caused or contributed to by Subcontractor, its agents, employees, suppliers or subcontractors. Payment of such amounts by Subcontractor for any such delays shall not relieve or release Subcontractor from any obligation hereunder, and shall not affect any other cause of action which Contractor otherwise would have against Subcontractor for the same or any other breach. Any damages to Contractor for any such delays may be deducted by Contractor at its option from the Subcontract Amount as damages and not as a penalty, and without limiting any rights of Contractor including the option of Contractor to declare the Subcontractor in default. Contractor shall not be liable to Subcontractor for delay to Subcontractor's Work for any reason. If the Contractor delays the Subcontractor, the sole remedy shall be an extension of the time for Subcontractor to complete Subcontractor's Work. If Subcontractor claims it has been delayed by Owner or others, the only obligation Contractor has to Subcontractor is to pass on to Owner or such others any claim Subcontractor contends it has and to pay Subcontractor any amounts which Owner or such others pay to Contractor as a result of such claims for delays caused by Owner or others. No claim for an extension of time or damages shall be allowed to Subcontractor for any cause or under any circumstances unless Subcontractor gives a written notice to Contractor within three (3) calendar days from the time of the beginning of the occurrence causing the delay. Delays attributable to weather shall be non-compensable. As such, Subcontractor cannot recover costs, either direct or indirect, from Contractor for delays caused by weather. If the Owner grants an extension of time, such extension shall be the sole remedy for the Subcontractor for weather related delays.

Changes in the Work. When the Contractor so orders in writing, the Subcontractor shall promptly make any and all changes in the Subcontractor's Work which are requested by Contractor, including, without limitations, additions, deletions or revisions to the Subcontractor's Work or a modification to the Schedule of Subcontractor's Work. Adjustments in the Subcontract Amount or Schedule of Work, if any, resulting from a change shall be set forth in a Subcontract Change Order. Subcontractor agrees to promptly proceed with the Subcontractor's Work as changed when so ordered in writing, even if the parties have not reached agreement on the terms of a Change Order. In connection with any issued or proposed Change Order, Contractor may request, and Subcontractor shall promptly prepare and submit at its own cost, a proposal setting forth all cost and time ramifications, if any, resulting from the Change Order. Subcontractor shall include with its proposal a detailed analysis, together with detailed documentation, in support of its proposal. If Subcontractor performs additional work which has not been ordered in writing by an authorized representative of Contractor, Subcontractor will not under any circumstances be entitled to additional compensation or schedule relief. Without limiting the foregoing, Subcontractor agrees and acknowledges that it shall have no right to rely upon oral direction, from the Contractor, Owner or Engineer, changing the Subcontractor's Work. Subcontractor further agrees and acknowledges that no adjustment to the Subcontract Amount or Schedule of Work will be allowed based upon Subcontractor's reliance on oral direction. If a change to the Subcontractor's Work is initiated by the Contractor at the request of the Owner, an express

condition precedent to payment to Subcontractor on account of such change is that Contractor shall have received full payment thereof from Owner for Subcontractor's changed Work. Each payment to Subcontractor on account of such change(s) shall be equal to Subcontractor's allocable share of Contractor's payment from Owner for the changes. In no event shall the profit percentage charged by the Subcontractor on a Change Order exceed the profit awarded to the Contractor by the Owner on the Change Order.

Claims. A "Claim" is any demand or assertion by Subcontractor seeking an increase in Subcontract Amount, an extension in the time for performance of Subcontractor's Work, or relief with respect to the other terms of the Subcontract. Subcontractor shall make all Claims in strict accordance with this Article and the Contract Documents. Claims shall include detailed documentation and information required by the Contract Documents. Claims must be submitted in writing by Subcontractor to Contractor within the earlier to occur of one (1) week after Subcontractor becomes aware of the events, conditions or circumstances giving rise to the Claim or five (5) days prior to the date by which Contractor is obligated under the Contract Documents to give notice and submit the Claim to the Owner. If Subcontractor fails to strictly comply with these requirements, the Claim shall be deemed waived and shall not be pursued by Subcontractor. After a Claim is submitted, Subcontractor shall timely provide all additional documentation and other information requested by Contractor, the Owner, or which are required by the Contract Documents. Contractor agrees to pursue against the Owner reasonable and substantiated Claims submitted by Subcontractor under the provisions of the Contract Documents. Subcontractor shall be responsible for the preparation of all Claims and for all legal and other costs incurred by Contractor in connection with the pursuit of a Claim against the Owner (including, without limitation, attorney fees, expert fees and consultant fees), and Subcontractor shall indemnify, defend and hold Contractor harmless from and against any claim or assertion by Owner that the Claim is deficient, improper or false. Subcontractor shall be bound by the outcome of the claim process under the Contract Documents, and if it is determined that Subcontractor is not entitled to relief from the Owner, then Contractor shall have no liability to Subcontractor with respect to its Claim. Pending final resolution of a Claim, unless otherwise agreed in writing, the Subcontractor shall proceed diligently with performance of the Subcontractor's Work.

Limitation of Liability. NOTWITHSTANDING ANYTHING IN THESE TERMS AND CONDITIONS TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT INJURY, LOSS OR DAMAGE (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR ANTICIPATED PROFITS, LOSS OF REVENUE, LOSS OF USE, DOWNTIME COSTS, OR BUSINESS INTERRUPTION) WHATSOEVER RELATED TO, ARISING OUT OF, OR IN CONNECTION WITH THE SERVICES OR THE CONTRACT. FURTHER, NOTWITHSTANDING ANYTHING IN THESE TERMS AND CONDITIONS OR ELSEWHERE TO THE CONTRARY, IN NO EVENT SHALL THE TOTAL LIABILITY OF CONTRACTOR ARISING OUT OF OR RELATING TO OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THE SUBJECT MATTER HEREOF EXCEED TEN THOUSAND DOLLARS (US \$10,000) IN THE AGGREGATE.

Suspension. Should the Owner suspend or terminate the Contractor's Work, in whole or in any part, which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing and upon receipt of said notice, this Agreement shall also be suspended or terminated respectively and the Subcontractor shall immediately stop the Subcontractor's Work. In the event of such Owner suspension or termination, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery on the Subcontractor's behalf.

Termination for Convenience. At any time Contractor shall have the right to terminate for convenience Subcontractor's performance of all or a part of the Subcontractor's Work by providing Subcontractor with a written notice of termination for convenience which shall be effective upon receipt by Subcontractor. Upon receipt of such notice, Subcontractor shall discontinue the Subcontractor's Work on the date and to the extent specified, and take all other actions requested by Contractor. Subcontractor shall be paid the reasonable value of Subcontractor's Work performed prior to termination plus reasonable direct close-out costs when payment therefor is received by Contractor from Owner. This is Subcontractor's sole remedy in the event of a termination for convenience. In no event shall Subcontractor be entitled to any other damages, including, without limitation, unabsorbed overhead and lost profits.

Default. If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Schedule of Work, or it fails to make prompt payment for its workers, subcontractors or suppliers, disregards Laws 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 seventy two (72) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, the Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies: (i) 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 which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit and attorney's fees; (ii) contract with one or more additional contractors to perform such part 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; and/or (iii) withhold payment of any moneys due the Subcontractor pending corrective action to the extent required by and to the satisfaction of the Contractor and the Engineer. In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as outlined above without notice.

Termination. If the Subcontractor fails to commence and satisfactorily continue correction of a default within seventy-two (72) hours after a notice is issued, then the Contractor may, in lieu of or in addition to the remedies provided therein, terminate this Agreement and prosecute the Subcontractor's Work to completion by contract or otherwise. All of the costs incurred by Contractor in so performing the Subcontractor's Work, including reasonable overhead, profit, liquidated damages, and attorneys' fees, shall be deducted from any moneys due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense, plus all other damages suffered by Contractor, exceeds the unpaid balance of the Subcontract Amount. Upon termination under this Article, Subcontractor shall not be entitled to any further payments until all of the Subcontractor's Work is completed to the satisfaction of Contractor and the amount owed by Subcontractor to Contractor has been finally determined.

Set-off and Back Charges. 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, profit and attorneys' fees. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount.

Dispute Resolution.

- (a) **Direct Discussions.** When a dispute arises between Subcontractor and the Contractor, the parties shall first endeavor to resolve the dispute through direct discussions between the principals of each party, or their respective designees. Subcontractor and Contractor hereby agree to waive their respective right to file a lawsuit against each other, and hereby agree to utilize the alternative dispute resolution proceedings outlined herein.
- (b) **Mediation.** Any dispute not resolved through the use of direct discussions shall be submitted to mediation. The completion of mediation shall be a condition precedent to Subcontractor's right to demand Arbitration. The mediation shall be administered by the American Arbitration Association ("Administrator") pursuant to its Construction Industry Arbitration Rules and Mediation Procedures currently in effect at the time of the proceeding. If the American Arbitration Association is not available or is unable to accommodate the agreed upon conditions for mediation and arbitration as set forth herein, the Administrator shall be JAMS and the Rules will be its Engineering and Construction Arbitration Rules & Procedures. The parties shall select a mediator within thirty (30) days of election of mediation. Mediation shall take place in the city in which the Project is located, or a mutually agreed upon location. The parties shall share the mediator's fee and costs and any filing fees equally. Each party shall be responsible for its own attorneys' fees and costs in the mediation. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- (i) To provide for expedited dispute resolution through mediation, by no later than 14 days prior to the mediation, the parties shall serve upon the mediator and each other a written position statement, with exhibits, outlining and supporting their respective claims and defenses. By no later than 3 days prior to the mediation, the parties shall serve upon the mediator and each other a response to each other's written position statement. After 8 hours of actual mediation time to be conducted in a single day, if the matter is not resolved, each party shall promptly submit one last, best, and final offer and demand in writing to the mediator before adjourning the mediation. The mediator shall disclose to the parties the amounts and details of said last offers and demands ("Last Offers"), which shall be accepted or rejected in a writing directed to the mediator within 2 hours of transmission of the Last Offers. Failure to respond to the Last Offers within 2 hours shall conclusively be deemed a rejection of said Last Offers.
- i. If the difference in the amounts claimed by the parties at either the commencement of arbitration or following the disclosure of Last Offers is Twenty-Five Thousand Dollars (\$25,000.00) or less, the mediator shall immediately assume the role of an arbitrator. The arbitrator shall not consider any item of evidence which was not produced by the parties in their respective statements of position nor disclosed to the other in the course of the mediation, all as determined by the arbitrator. Within fifteen (15) days of having received the Last Offers, the arbitrator shall issue an award which shall adopt one and only one of said Last Offers, without modification or amendment. By execution of any Agreement incorporating these terms and conditions, Contractor and Subcontractor specifically consent to the conversion of the mediator to an arbitrator as contemplated herein.
- (c) **Arbitration.** If the difference between the Last Offer is greater than Twenty-Five Thousand Dollars (\$25,000.00), the mediator shall not become the arbitrator, and instead either party may submit the dispute to arbitration, which shall be administered by either (a) the American Arbitration Association, (b) another mediation/arbitration service; or (c) directly by the arbitrator as mutually agreed upon by the parties. The arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect on the date of the filing of the demand for arbitration. The parties agree that the award rendered by the arbitrator(s) shall be final, and judgment may be entered upon the arbitration award in accordance with applicable law in any court of competent jurisdiction.
- (d) **Choice of Law.** The validity, interpretation and performance of this Subcontract shall be governed by the laws of the State in which the Project is located, including its statutes of limitation, without regard to conflicts of law principles that would require the application of the procedural or substantive law of any other jurisdiction.
- (e) **Claims Involving Owner or Engineer.** In case of any dispute between Contractor and Subcontractor in any way relating to or arising from any act or omission of the Owner or Engineer or involving the Contract Documents, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner, and in particular Subcontractor shall be bound by any and all decisions and determinations made by Owner, the Engineer and any court or arbitrator whether or not Subcontractor is a party to such proceeding. Contractor shall not be liable to Subcontractor in excess of any sum actually received from Owner on behalf of Subcontractor. In addition, Subcontractor agrees to stay any arbitration or dispute between the Subcontractor and Contractor that are the subject of the Owner related dispute until resolution of the Owner related dispute. Subcontractor shall at Contractor's sole option and request, participate in any dispute process with the Owner, either in connection with the pursuit of a Subcontractor Claim, as described in the paragraphs above, or in connection with defending claims of the Owner or Engineer involving Subcontractor or Subcontractor's Work. With respect to any such dispute that is pursued or defended by Contractor, Subcontractor, at Subcontractor's expense, agrees to furnish all documents, statements, backup, cost information, witnesses, and other information requested by Contractor and to pay or reimburse Contractor for all costs and expenses incurred by Contractor in connection with Subcontractor's role in the dispute, including without limitation, Contractor's attorneys', experts' and consultants' fees. Under no circumstances shall Contractor have an obligation to pursue Claims or assert defenses on behalf of Subcontractor which Contractor believes do not have merit or which are lacking in backup documentation and/or substantiation. At Contractor's sole option, Subcontractor agrees to consolidate disputes with any other pending dispute resolution proceeding between Contractor and any other party which involves Subcontractor's Work.
- (f) **Prevailing Party.** In any dispute resolution proceeding or other legal action between the parties relating to this Subcontract, the prevailing party shall recover from the other party all reasonable attorneys' fees, consultants' costs and other expenses, including but not limited to arbitration filing fees and arbitrator(s) compensation, in connection with such action.
- (g) **Duty to Proceed.** Subcontractor shall continue to diligently and timely perform the Subcontractor's Work during any dispute and/or alternative dispute resolution proceeding.