

GEORGIA SUPPLEMENTAL TERMS AND CONDITIONS

VERSION 1.1, REVISED JULY 1, 2019

The following clauses apply to Work in the State of Georgia. To the extent these clauses conflict with any term or condition in the *Standard Terms and Conditions*, the Parties shall (i) endeavor to interpret the clauses in harmony, otherwise (ii) these *Georgia Supplemental Terms and Conditions* take precedence.

Subcontractor agrees to flow down and incorporate all applicable clauses to its Lower Tier Subcontractors and its Lower Tier Suppliers.

1. REVISIONS TO THE STANDARD TERMS AND CONDITIONS.

1.1 Replace *Section 3.3 Partial Payments and Retainage* of the *Standard Terms and Conditions* in its entirety as with the following:

"3.3 Partial payments shall be due to Subcontractor in the amount of the Work in place which has been approved by the Contractor and the Owner less any retainage withheld by the Owner for that Work. If the Contract Documents allow Contractor partial payments for stored materials, partial payments shall also be due to Subcontractor in the amount of the stored materials which have been approved by Contractor and the Owner less any retainage withheld by the Owner for the stored materials. For purposes of determining partial payments, Subcontractor shall submit to Contractor for approval a breakdown of the Subcontract Price showing the amount included therein in each principal category of work within five (5) days of the execution of the Subcontract. If the Subcontractor fails to timely provide a breakdown or if the Contractor disapproves of the Subcontractor's breakdown, Contractor shall establish a reasonable breakdown that shall serve as the basis for partial payments.

Pursuant to GA. CODE. ANN. § 13-11-5(b), the amount of retainage withheld by Contractor shall not exceed the percentage retained from Contractor by Owner on account of Subcontractor's work.

Pursuant to GA. CODE. ANN. § 13-11-6, Contractor shall, within ten (10) days from Contractor's receipt of retainage from Owner, pass through payments to Subcontractor and shall reduce Subcontractor's retainage in the same manner as Contractor's retainage is reduced by Owner, provided that the value of Subcontractor's work complete and in place equals fifty (50) percent of its subcontract value, including approved change orders and other additions to the subcontract value and, provided, further, that the work of Subcontractor is proceeding satisfactorily and, provided, further, that Subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete its work as Contractor in its reasonable discretion may require, including but not limited to a payment and performance bond."

1.2 Replace *Section 3.4 Time for Payment* of the *Standard Terms and Conditions* in its entirety with the following:

"3.4 Partial payments for satisfactory performance, subject to withholdings or off-sets as provided herein, shall be due within seven (7) days following receipt of payment from the Owner by Contractor. No partial payment made under the Subcontract shall be considered an acceptance of the Work, in whole or in part, and Subcontractor agrees that Contractor's receipt of payment from the Owner is a condition precedent to Subcontractor's right to payment from Contractor and/or Contractor's surety, if any. Subcontractor further agrees and acknowledges that it is not entitled to receive any payments for work performed in the event that Contractor is not paid by the Owner for such work; it is relying solely on the credit of the Owner, not the Contractor, in entering into this Agreement; and that payment from the Owner to Contractor is the sole and exclusive source of funding from which the Subcontractor shall be paid."

1.3 Replace *Section 3.7 Withholdings and Off-Sets* of the *Standard Terms and Conditions* in its entirety with the following:

"3.7 Pursuant to GA. CODE. ANN. § 13-11-5, Contractor may withhold payment to Subcontractor for the following: unsatisfactory job progress; defective construction which has not been remedied; disputed work; third-party claims filed or reasonable evidence that a claim will be filed; failure of Subcontractor to make timely payments for labor, equipment, and materials; damage caused by Subcontractor to Owner, Contractor, or subcontractors; or reasonable evidence that the Subcontract cannot be completed for the unpaid balance of the Subcontract Price.

Contractor may off-set amounts otherwise due under the Subcontract or any other contractual arrangements between the parties to cover or apply against Contractor's reasonable estimate of any costs or liability Contractor has incurred or may incur for which Subcontractor may be responsible."

1.4 Replace *Section 3.8 Final Payment* of the *Standard Terms and Conditions* in its entirety with the following:

“3.8 Final payment on the Subcontract, subject to withholdings or off-sets permitted hereunder, shall be made after Subcontractor’s work has been completed and approved by the Owner, satisfactory proof of payment of all amounts owed by Subcontractor in connection with the Subcontract has been provided and the Work is complete. Receipt of final payment from the Owner shall be a condition precedent to any obligation of Contractor and/or Contractor’s surety to pay Subcontractor. Subcontractor agrees and acknowledges that it is not entitled to receive final payment in the event that Contractor is not paid by the Owner for such work; it is relying solely on the credit of the Owner, not the Contractor, in entering into this Subcontract; and that payment from the Owner to Contractor is the sole and exclusive source of funding from which the Subcontractor shall be paid.”

1.5 Replace *Section 3.9 Partial and Final Releases* of the *Standard Terms and Conditions* in its entirety as with the following:

“3.9 As a condition for each partial payment under the Subcontract, and as a condition for final payment, Subcontractor shall execute the *Georgia Interim Waiver and Release Upon Payment* and *Georgia Waiver and Release Upon Final Payment* forms pursuant to GA. CODE ANN. § 44-14-366, waiving all claims arising from prior work, including, but not limited to, claims against Contractor’s payment bond and mechanic’s liens; certifying that Subcontractor has paid all of its bills, taxes or other obligations; and indemnifying and holding Contractor harmless from all of the foregoing. If requested by Contractor, as a further condition for each partial payment and as a condition to final payment, Subcontractor shall furnish to Contractor executed *Georgia Interim Waiver and Release Upon Payment* and *Georgia Waiver and Release Upon Final Payment* forms pursuant to GA. CODE ANN. § 44-14-366 from all subcontractors, suppliers and materialmen of Subcontractor. All requests for payment shall be submitted in a format acceptable to Contractor. Receipt of each partial payment from the Owner shall be a condition precedent to any obligation of Contractor to pay Subcontractor. Subcontractor agrees and acknowledges that it is not entitled to receive any partial payments in the event that Contractor is not paid by the Owner for such work; it is relying solely on the credit of the Owner, not the Contractor, in entering into this Subcontract; and that payment from the Owner to Contractor is the sole and exclusive source of funding from which the Subcontractor shall be paid.”

2. LATE PAYMENTS.

Pursuant to GA. CODE ANN. § 13-11-7, if a periodic or final payment to Subcontractor is delayed more than seven (7) days after receipt of periodic or final payment by Contractor, Contractor shall pay Subcontractor interest, beginning on the day following the due date, at the rate of one percent (1%) per month or a *pro rata* fraction thereof on the unpaid balance as may be due. However, no interest is due unless the person being charged interest has been notified of the provision of this Section at the time the request for payment is made. Acceptance of progress payments or final payment shall release all claims for interest on said payments.

3. NO DISCRIMINATION.

In connection with the performance of Work under this Agreement, Subcontractor agrees to observe (i) GA. CODE ANN. § 34-5-3 regarding sex discrimination in employment, (ii) the Georgia Equal Employment for Persons With Disabilities Code, GA. CODE ANN. § 34-6A-1 *et seq.*, and (iii) all applicable Georgia and federal law regarding nondiscrimination. Subcontractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or handicap, except to the extent such discrimination is not prohibited by pertinent state or federal law or executive order. In addition, Subcontractor agrees to actively recruit in accordance with any affirmative action programs applicable to Subcontractor. The aforesaid provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor shall post notices in conspicuous places, available for employees and applicants for employment, prepared by Subcontractor, and approved by the government when required, setting forth the provisions of this Article.

4. WORK FOR A PUBLIC BODY.

When the Owner is a public body, the following clauses also apply to the Subcontractor’s Work:

4.1 **Legal Compliance.** The Subcontractor shall comply with all laws, rules, regulations, ordinances, and orders of any government agency having jurisdiction in the performance of the Work and shall ensure the compliance of its subcontractors. Without limiting the generality of the foregoing, the following laws are specifically referenced: (a) the Drug-Free Workplace Act, GA. CODE ANN. § 50-24-1, *et seq.*; (b) Preference for Georgia Supplies, materials, equipment, and agricultural products, GA. CODE ANN. §§ 50-5-60 through 61; (c) Preference for Georgia forest products, GA. CODE ANN. § 50-5-63; (d) Preference to local sellers of Georgia products, GA. CODE ANN. § 50-5-62; (e) Standards and Requirements for Construction, Alterations, etc., GA. CODE ANN. § 8-2-1 *et seq.*; (f) Control of Soil Erosion and Sedimentation, O GA. CODE ANN. § 25-2-1, *et seq.*; (g) Regulation of Fire and other Hazards, GA. CODE ANN. § 25-2-1 *et seq.*; (h) Regulation of Blasting Operations, GA. CODE ANN. §§ 25-

2-1, *et seq.* & 25-9-1, *et seq.*; (i) Providing Safe workplace, GA. CODE ANN. §§ 34-2-10 & 34-7-20; (j) Underground Gas Pipes, GA. CODE ANN. § 25-9-1 *et seq.*; (k) High Voltage Safety Act, GA. CODE ANN. § 46-3-30 *et seq.*; (l) Access and Use by Physically Handicapped Persons, GA. CODE ANN. § 30-3-1, *et seq.*; (m) Small and Minority Business Enterprises, GA. CODE ANN. § 50-5-120, *et seq.* and 50-5-130, *et seq.*; (n) Trading with the State or State Officials, GA. CODE ANN. § 45-10-20 to 45-10-71; (o) Title VII of the Civil Rights Act; (p) Age Discrimination in Employment Act; (q) Americans with Disabilities Act; (r) Federal Occupational Safety and Health Act, 29 U. S. C. § 651, *et seq.*; (s) Federal Emergency Planning and Community Right-to-Know Act, 42 U. S. C. § 11001, *et seq.*; (t) International Building Code, with Georgia State Amendments; (u) International Mechanical Code, with Georgia State Amendments; (v) International Fuel Gas Code, with Georgia State Amendments; (w) International Plumbing Code, with Georgia State Amendments; (x) International Electrical Code, with Georgia State Amendments; and, (y) International Energy Conservation Code, with Georgia State Amendments.

- 4.2 **Drug-Free Work Place Act.** The Subcontractor acknowledges that he is fully aware of the contents and requirements of GA. CODE ANN. § 50-24-1 *et seq.* The Subcontractor, upon submission of a Price Proposal in connection with this Agreement, does hereby certify that it and its subcontractors are and will remain in compliance with the aforesaid act.
- 4.3 **Trading with the State Statute.** In submitting a Price Proposal, the Subcontractor certifies that the provisions of law contained in GA. CODE ANN. §§ 45-10-20 to -71 prohibiting officials and employees of the state from engaging in certain transactions with the state and state agencies, have not and will not be violated in any respect in regard to this contract.
- 4.4 **Immigration Reform Compliance.** The Subcontractor hereby certifies its compliance with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act GA. CODE ANN. § 13-10-90 *et seq.* Subcontractor certifies that Subcontractor has registered at <https://www.vis-dhs.com/EmployerRegistration> to verify information of all new employees in order to comply with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act. Subcontractor further certifies that it shall execute any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 *et seq.* Subcontractor warrants that it has included a similar provision in all written agreements with any subcontractors engaged to perform services under this Agreement.
- 4.5 **Georgia Security and Immigration Compliance Act Affidavit.** The Subcontractor shall complete and return the Georgia Security and Immigration Compliance Act Affidavit, provided as State of Georgia Exhibit F, to the Contractor.
- 4.6 **Subcontractor's Work Authorization Certification (E-Verify).** Pursuant to GA. CODE ANN. §13-10-91, the Subcontractor must register and participate in a federal work authorization program. The Subcontractor may participate in any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration and Control Act of 1986 ("IRCA").
- 4.7 **Sexual Harassment Prevention.** The State of Georgia and the Contractor are committed to providing a workplace environment free from sexual harassment for its employees and for all persons who interact with state government and the Contractor. The State of Georgia requires that its contractors and their employees and subcontractors who interact with State employees to act in a professional manner to contribute to a work environment that is free from sexual harassment. The State of Georgia has adopted a Statewide Sexual Harassment Prevention Policy, a copy of which is available on-line at <http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy>. If the Subcontractor, including its employees and subcontractors, violates the Policy, the Subcontractor may be subject to appropriate corrective action. Such action may include, but is not limited to, notification to the employer, removal from Owner premises, restricted access to Owner premises and/or personnel, termination of the Agreement, and/or other corrective action(s) deemed necessary by the Owner or Contractor. Pursuant to the State of Georgia's Statewide Sexual Harassment Prevention Policy, the Subcontractor must complete sexual harassment prevention training on an annual basis.
- 4.7.1 The Subcontractor certifies that: (a) The Subcontractor will ensure that such employees and subcontractors have received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy; (b) Subcontractor has provided sexual harassment prevention training in the last year to such employees and subcontractors and will continue to do so on an annual basis or Subcontractor will ensure that such employees and subcontractors complete the Georgia Department of Administrative Services' sexual harassment prevention training located at this direct link <https://www.youtube.com/embed/NjVtODDnc2s?rel=0> prior to accessing State premises and prior to interacting with State or Contractor employees and on an annual basis thereafter; and (c) Upon request of the Owner or Contractor, Subcontractor will provide documentation substantiating such employees' and subcontractors' acknowledgment of the State of Georgia's Statewide Sexual Harassment Prevention Policy and annual completion of sexual harassment prevention training.
- 4.7.2 **THE SUBCONTRACTOR SHALL INDEMNIFY AND HOLD CONTRACTOR AND OWNER HARMLESS FROM ALL LIABILITIES,**

LOSSES, COSTS, AND EXPENSES ATTRIBUTABLE TO THE FAILURE OF THE SUBCONTRACTOR OR ITS EMPLOYEES AND SUBCONTRACTORS TO COMPLY WITH THIS PROVISION AND THE STATE OF GEORGIA'S STATEWIDE SEXUAL HARASSMENT PREVENTION POLICY, INCLUDING, BUT NOT LIMITED TO, ANY FINES, PENALTIES, CORRECTIVE MEASURES, ATTORNEYS' FEES, EXPERT WITNESSES' FEES, LOST PROFITS, LOSS OF REPUTATION, AND COSTS. The Subcontractor will not be entitled to a change in the Contract Time or Contract Price because of (i) a work stoppage or the removal of an employee or subcontractor from the Site because of a violation of the State of Georgia's Statewide Sexual Harassment Prevention Policy; or (ii) any delay or cost increase arising from training employees or subcontractors prior to the employees' or subcontractors' site access.

4.7.3 The Subcontractor shall include the costs to comply with these requirements in its Subcontract Price.