

## STANDARD TERMS AND CONDITIONS

VERSION 2.0, REVISED JULY 1, 2018

### 1. DEFINITIONS.

- 1.1 “**Centennial**,” “**CCE**” or “**Contractor**” means Centennial Contractors Enterprises, Inc.
- 1.2 “**Agreement**” means the subcontract and documents as have been incorporated into the Subcontract by reference thereunder. “**Agreement**” also means all exhibits to the Subcontract and any documents referenced within the Subcontract.
- 1.3 “**Subcontractor**” means the entity identified in the Agreement to provide Work or services, and includes all Subcontractor’s successors or assigns.
- 1.4 “**Owner**” means the entity identified in the Agreement. If no Owner is identified in the Agreement, the “**Owner**” means the party with whom Contractor has a contract.
- 1.5 “**Contract Documents**” means the documents identified in the Agreement and each Modification or Change Order issued by the Owner after the execution of the Contract between the Owner and Contractor. If no Contract Documents are identified in the Subcontract, “**Contract Documents**” means the documents that form the Contract between Owner and Contractor, including, without limitation, any Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Contract, and Modifications or Change Orders issued after execution of the Contract. By signing the Subcontract, the Subcontractor warrants that it has seen the Contract Documents and agrees to be bound by the terms and conditions of the Contract Documents as described in Section 2.2 *Flow Down of Contract Documents*.
- 1.6 “**Work**” means the construction and services required by the Agreement, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Subcontractor or its subcontractors or suppliers to fulfill the Subcontractor’s obligations. The Work may constitute the whole or a part of the Project.
- 1.7 “**Working Conditions**” mean the conditions at the Project where the Work is occurring. Some requirements governing the Working Conditions at the Project site are stated in Article 18, below.
- 1.8 “**Project**” means the total construction of which the Work performed under the Agreement as described in the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.
- 1.9 “**Subcontract Price**” is the total price of the Work as stated in the Subcontract and as may be modified, in writing, by the Parties from time to time.
- 1.10 “**Lower Tier Supplier**” means any company or individual that provides materials – but no labor – to the Project on behalf of the Subcontractor regardless of whether the Lower Tier Supplier has a contract, purchase order, or written or oral agreement with the Subcontractor or whether a subcontractor or supplier to the Subcontractor at any tier has an contract, purchase order, or written or oral agreement with the Lower Tier Supplier. There may be none, one, or more Lower Tier Supplier on a Project and whether or not Lower Tier Supplier is used in a singular or plural context, Lower Tier Supplier describes each and all Lower Tier Suppliers to the Subcontractor.
- 1.11 “**Lower Tier Subcontractor**” means any company or individual that provides labor, alone, or labor and materials to the Project on behalf of the Subcontractor regardless of whether the Lower Tier Subcontractor has a contract, purchase order, or written or oral agreement with the Subcontractor or whether a subcontractor or supplier to the Subcontractor at any tier has an contract, purchase order, or written or oral agreement with the Lower Tier Subcontractor. There may be none, one, or more Lower Tier Subcontractor on a Project and whether or not Lower Tier Subcontractor is used in a singular or plural context, Lower Tier Subcontractor describes each and all Lower Tier Subcontractors to the Subcontractor.
- 1.12 “**Parties**” means Contractor and Subcontractor.

### 2. SUBCONTRACTOR’S WORK.

#### 2.1 Subcontractor’s Work.

Subcontractor shall perform all Work and shall furnish all supervision, labor, materials, plant, scaffolding, hoists, tools, equipment, supplies, and all other things necessary for the construction and completion of the Work described in the Agreement. The Work shall be performed in strict accordance with the Working Conditions to the satisfaction of Contractor and the Owner.

#### 2.2 Flow Down of Contract Documents.

With respect to Work covered by the Agreement and to the extent any rights, obligations, risks, and responsibilities relate in any part or in any way, directly or indirectly, to the Work, Subcontractor shall have all rights against Contractor which Contractor has

against Owner under the Contract Documents, except to the extent the Agreement waives or limits the Subcontractor's rights against Contractor. Subcontractor shall also assume toward Contractor all obligations, risks, and responsibilities which Contractor has assumed towards the Owner in the Contract Documents. Subcontractor shall have the right to enforce its rights and remedies, and to defend against claims against it by the Owner as provided in Article 11 *Claims and Disputes*.

### **2.3 Relationship of the Parties.**

Subcontractor is, and will remain, an independent contractor. Nothing in the Agreement shall be construed to create a partnership, joint venture, or relationship of employer and employee. Subcontractor is solely responsible for the means and methods it uses in performing its Work.

### **2.4 Subcontractor's Use of Lower Tier Subcontractors and Lower Tier Suppliers.**

Subcontractor remains solely responsible for the performance of its Lower Tier Subcontractors and Lower Tier Suppliers. Before any Lower Tier Subcontractor is permitted to commence work at or enter upon the site of the Work, Subcontractor shall disclose to the Contractor, in writing, the name of each Lower Tier Subcontractor and Lower Tier Supplier it intends to use on the Project for written approval by the Contractor. Subcontractor may not use any Lower Tier Subcontractor or Lower Tier Supplier on the Project without the Contractor's written approval, which will not be unreasonably withheld.

## **3. PAYMENT.**

### **3.1 Payment.**

Unless otherwise stated in the Agreement, Contractor shall pay Subcontractor in installments for performance of the Work, subject to additions and deductions as provided in the Agreement. The amount of the payments will total the Subcontract Price.

### **3.2 Requests for Payment.**

Subcontractor shall submit all requests for payment in a format acceptable to Contractor.

### **3.3 Partial Payments and Retainage.**

Unless otherwise stated in the Subcontract, partial payments shall be due to Subcontractor in the amount of ninety (90%) of the Work in place which has been approved by Contractor and the Owner. If the Contract Documents allow Contractor partial payments for stored materials, partial payments shall also be due to Subcontractor in the amount of ninety percent (90%) of stored materials which have been approved by Contractor and the Owner. For the purpose of determining partial payments, Subcontractor shall submit to Contractor for approval a breakdown of the total price 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.

### **3.4 Time for Partial Payments.**

Unless otherwise stated in the Subcontract, partial payments for satisfactory performance, subject to withholdings or off-sets as provided in the Agreement or as permitted by law, are due seven (7) days following the Contractor's receipt of payment from the Owner. Partial payment to the Subcontractor may not be considered an acceptance of the Work, in whole or in part. The Subcontractor agrees that Contractor's receipt of payment from the Owner is a condition precedent Subcontractor's right to payment from Contractor and Contractor's surety, if any.

### **3.5 Payment of Subcontractors and Suppliers.**

Subcontractor shall ensure that, at all times, it pays all Lower Tier Subcontractors, Lower Tier Suppliers, and employees any amounts due in connection with the performance of the Work. After the first partial payment hereunder, Contractor shall have the right to withhold any subsequent partial payments until Subcontractor submits evidence reasonably satisfactory to Contractor that all amounts owed in connection with the performance of the Work have been paid. Further, Subcontractor agrees that, after three (3) days' notice, Contractor may pay all persons which have not been paid the monies due to them in connection with the Work, whether or not a claim has been filed, and Subcontractor shall, to the extent that Contractor has not recovered said amounts pursuant to withholding, pay said amounts to Contractor upon demand. Subcontractor shall also immediately reimburse Contractor for any amounts paid by Contractor as a result of claims asserted against the Owner, the Owner's payment bond, if any, Contractor and Contractor's payment bond by any subcontractor, employee or supplier of Subcontractor, including, without limitation, attorneys' fees, expert witness fees, and costs imposed by any forums for dispute resolution.

Subcontractor agrees that Contractor may, at its discretion and without notice to the Subcontractor, pay the Subcontractor with a joint-check in the name of the Subcontractor and a Lower Tier Subcontractor or Lower Tier Supplier.

### **3.6 Title to Work.**

All material and work covered by partial payments shall become the property of the Owner. However, this provision shall not relieve Subcontractor from the sole responsibility and liability for all Work for which payments have been made until final acceptance thereof by the Owner.

### **3.7 Withholdings and Off-Sets.**

Contractor may withhold and off-set amounts otherwise due under this Agreement 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.

### **3.8 Final Payment.**

Unless otherwise stated in the Subcontract, Contractor shall make final payment on the Subcontract, subject to withholdings or off-sets permitted hereunder, only 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 Agreement has been provided to the Contractor, and the entire Agreement is complete. Receipt of final payment from the Owner is a condition precedent to any obligation of Contractor and Contractor's surety to pay Subcontractor.

### **3.9 Partial and Final Releases.**

As a condition for each partial payment and as a condition for final payment, Subcontractor shall execute a release in a form satisfactory to Contractor, waiving and releasing 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 committing to defend, indemnify, and hold Contractor harmless from all costs or claims related to the foregoing. If requested by Contractor, as a further condition for each partial payment and as a condition for final payment, Subcontractor shall furnish Contractor such executed releases from all Lower Tier Subcontractors and Lower Tier Suppliers.

### **3.10 Additional Payment Procedures.**

From time-to-time and without prior notice to Subcontractor, the Contractor may establish additional, reasonable payment procedures and requirements.

## **4. SUBCONTRACTOR'S REPRESENTATIONS AND INVESTIGATION.**

Subcontractor represents that it is fully licensed and qualified to perform the Work. Subcontractor acknowledges that prior to the execution of the Subcontract, the Subcontractor has by its own independent investigation ascertained the conditions involved in performing the Work, and the Subcontract's and Contract Documents' obligations. Subcontractor further acknowledges it verified all information furnished by Contractor or others and that Subcontractor has satisfied itself as to the correctness and accuracy of that information. Any failure by the Subcontractor to independently investigate and become fully informed will not relieve Subcontractor from its responsibilities hereunder.

## **5. PERFORMANCE AND PAYMENT BONDS.**

Unless otherwise stated in the Subcontract, the Subcontractor is required to provide performance and payment bonds in a form and from a surety acceptable to Contractor. The Contractor deems sureties listed on the U.S. Department of the Treasury's Listing of Approved Sureties (Department Circular 570) acceptable without further review. Subcontractor shall include the cost of the bonds in the Subcontract Price.

## **6. SUBCONTRACTOR'S LIABILITY AND RESPONSIBILITIES.**

### **6.1 Liability.**

Subcontractor shall be liable to Contractor for all costs Contractor incurs as a result of Subcontractor's failure to fully perform and complete the Work in strict accordance with the Agreement. Subcontractor's failure to perform and complete shall include the failure to perform and complete by any of its Lower Tier Subcontractors or Lower Tier Suppliers. Subcontractor's liability to the Contractor shall include, but not be limited to, (1) damages and other delay costs payable by Contractor to the Owner; (2) Contractor's increased costs of performance, such as extended overhead and increased performance costs resulting from Subcontractor-caused delays or improper Subcontractor work; (3) warranty and rework costs; (4) liability to third parties; (5) excess costs; (6) Contractor's home office overhead; and (7) attorneys' fees, expert witness fees, and costs imposed by the forums for dispute resolution.

### **6.2 No Limit of Liability.**

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

### **6.3 Responsibility.**

Subcontractor assumes the entire responsibility and liability for all Work, supervision, safety, labor, and materials the Subcontractor provides under the Subcontract, whether or not erected in place, and for all plant, scaffolding, hoists, tools, equipment, supplies, and other things provided by Subcontractor until final acceptance of the Work by the Owner. In the event of any loss, damage, or destruction thereof from any cause, Subcontractor shall be liable therefore, and shall repair, rebuild, and make good said loss, damage or destruction at Subcontractor's cost.

#### 6.4 Use of Machinery or Other Items.

If Subcontractor or any of its agents, employees, Lower Tier Subcontractor, or Lower Tier Suppliers utilize any machinery, equipment, tools, scaffolding, hoists, lifts, temporary facilities, or similar items belonging to or under the control of Contractor (collectively, "**Machinery**"), Subcontractor shall be liable to Contractor for any loss or damage (including personal injury or death) which may arise from the such use. **SUBCONTRACTOR SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CONTRACTOR AND ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, AND SURETIES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, EXPERT WITNESS FEES, AND COSTS IMPOSED BY ANY FORUM FOR DISPUTE RESOLUTION, ARISING OUT OF OR RELATED SUCH USE, EXCEPT WHERE SUCH LOSS OR DAMAGE IS DUE TO THE SOLE NEGLIGENCE OF CONTRACTOR OR CONTRACTOR EMPLOYEES.** Subcontractor agrees that it accepts Contractor's Machinery "as-is" and without any warranty, express or implied, as to the Machinery's suitability, condition, safety, or operation.

#### 6.5 Cleanup.

Subcontractor shall, at its own expense, keep the premises at all times clean, sanitary, and free from waste materials, packaging, and other debris accumulated in connection with the Work by collecting and removing waste from the job site on a daily basis. Upon the completion of the Work in each area, Subcontractor shall sweep and otherwise make the Work area and its immediate vicinity broom-clean, remove all of its tools, equipment, scaffolds, temporary structures, and surplus materials as directed by Contractor, and at final inspection, clean and prepare the Work for acceptance by the Owner. If, in the sole opinion of the Contractor, the job is not being maintained in a clean, sanitary, and safe condition as it relates to the Work, the Contractor may have the condition corrected after eight (8) hours' notice to the Subcontractor and may charge all associated costs to the Subcontractor.

#### 6.6 Contractor Markup.

In addition to Subcontractor's liability for Contractor's costs under the Subcontract, the Contractor is entitled to and shall charge the Subcontractor a ten percent (10%) markup to compensate Contractor. This markup is not a penalty, but is established as liquidated damages to compensate the Contractor for its administrative costs and to allow the Contractor a reasonable profit on work which the Contractor must perform as a result of Subcontractor's failure to properly perform and complete its Work.

### 7. SUBCONTRACTOR'S INSURANCE.

#### 7.1 Insurance Required

Prior to commencing Work, Subcontractor shall procure and thereafter maintain, at its own expense, until one (1) year elapses from the final completion of the Work, insurance coverage in a form, and from insurers acceptable to Contractor. The name of the Subcontractor as listed on the Subcontract must match the "Named Insured" on the Certificate of Insurance.

#### 7.2 Certificates of Insurance

Certificates of insurance acceptable to Contractor shall be filed with Contractor prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. Subcontractor shall submit a Certificate of Insurance naming Contractor, *Centennial Contractors Enterprises, Inc.*, as the "Certificate Holder" at the Contractor's address listed on the Subcontract. The Subcontractor shall submit this Certificate with, or within five (5) days of, the Subcontractor's delivery of the executed Subcontract and include the additional insured and other endorsements, as applicable.

#### 7.3 Waivers of Subrogation

Contractor and Subcontractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by a fiduciary. Subcontractor shall require of its Lower Tier Subcontractors, agents, and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

#### 7.4 Lower Tier Subcontractor Insurance Required

Prior to commencing Work, Subcontractor shall require its Lower Tier Subcontractors procure and thereafter maintain, at each's own expense, until one (1) year elapses from the final completion of the Work, insurance coverage in a form and from insurers acceptable to Contractor. The amounts, limits, and principal features of the Lower Tier Subcontractors' coverage shall meet or exceed those limits applicable to the Subcontractor. Before any Lower Tier Subcontractor is permitted to commence work at or enter upon the site of the Work, the Subcontractor shall file certificates of insurance acceptable to the Contractor with the Contractor prior to commencement of the Lower Tier Subcontractor's work and thereafter upon renewal or replacement of each required policy of insurance. Lower Tier Subcontractor shall submit a Certificate of Insurance naming Contractor, *Centennial Contractors Enterprises, Inc.*, as the "Certificate Holder" at the address listed on the Subcontract. The Lower Tier Subcontractors' Commercial General Liability ("CGL") and Business Automobile Liability policies must include Contractor and Owner as additional insureds. The Lower Tier

Subcontractors' Policy must be written on an ISO occurrence form CG 00 01 10 01 or substitute form providing equivalent broad form coverage and shall cover liability arising from premises, operations, independent contractors, products/completed operations, and personal and advertising injury.

#### **7.5 Failure to Timely Provide Evidence of Insurance**

The Subcontractor's delay in providing satisfactory evidence of insurance for itself or any of its Lower Tier Subcontractors will not excuse Subcontractor's obligations to perform the Work under the Agreement. The failure or delay by the Subcontractor to provide satisfactory evidence of insurance in time for the Contractor to reasonably review and approve the certificates of insurance for the Subcontractor and Lower Tier Subcontractors will not be the basis for the Subcontractor to obtain a change in the Subcontract Price or Subcontract Time.

### **8. TIME OF PERFORMANCE.**

#### **8.1 Schedule**

Time is of the essence with respect to Subcontractor's performance under the Agreement. The Subcontractor shall proceed with the Work in a prompt and diligent manner, in accordance with Contractor's schedule as the Contractor reasonably amends from time to time. Should Subcontractor fail to perform and complete the Work specified in the Agreement in accordance with the Contractor's schedule, and provided the Subcontractor has not previously obtained an extension of time from the Contractor or change in the Subcontract Time, Subcontractor shall be liable to Contractor and shall promptly reimburse Contractor for all costs incurred by Contractor due to the delay as described in Paragraph 6.1, above, and as described in the Agreement. The Subcontractor shall also be liable for and shall be charged its share of liquidated damages assessed by the Owner, such share to be determined by Contractor at its sole discretion. The Contractor shall be entitled to deduct all such damages and liability from any payments due to Subcontractor under the Agreement or any other agreement between the Parties. If payments owed to the Subcontractor are insufficient to fully compensate Contractor, Subcontractor shall pay Contractor the difference. The provisions for time established in the Subcontractor are stated in terms of calendar days, unless otherwise expressly stated.

#### **8.2 Compensation for Delays**

Subcontractor will be entitled to additional compensation for compliance with schedule amendments only to the extent the Contract Documents entitle Contractor to reimbursement. Receipt of payment from the Owner for delays or schedule amendments, however, shall be a condition precedent to Contractor's and Contractor's surety's obligation to pay Subcontractor for same.

#### **8.3 Submittal of Schedule**

If requested by Contractor, Subcontractor shall submit a detailed schedule for performance of the Work, in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents. Contractor may, in its sole discretion, direct Subcontractor to make modifications and revisions to said schedule.

#### **8.4 Coordination**

Subcontractor will coordinate its Work with the work of Contractor, other subcontractors, and the Owner's other contractors, if any, so that no delays or interference will occur in the completion of any part or the whole of the Project.

#### **8.5 Suspension of the Work**

Contractor may order Subcontractor to suspend, delay, or interrupt all or any part of the Work for a reasonable period of time as determined by Contractor, and Subcontractor shall not be entitled to additional compensation for such suspension, delay, or interruption unless Contractor receives payment for same from the Owner.

### **9. CHANGES.**

#### **9.1 Changes**

Contractor may, at any time, unilaterally or by agreement with Subcontractor, without notice to any sureties, make changes in the Work covered the Agreement. Any unilateral order or agreement under this Article 9 shall be in writing. Subcontractor shall perform the Work as changed without delay.

#### **9.2 Owner Changes or Discrepancies in Contract Documents.**

##### **9.2.1 Generally.**

Subcontractor shall submit to Contractor any request for change ("RFC") for adjustment in the Subcontract Price, Subcontract Time or Schedule, or other provisions of the Agreement due to changes by the Owner or discrepancies in the Contract Documents. Said RFC shall be submitted in writing by Subcontractor in time to allow Contractor to comply with the applicable provisions of the Contract Documents. The Contractor will only increase the Subcontract Price to the extent that Contractor is entitled to and receives relief from the Owner. Further, the Contractor will only adjust the Contract Price only to the Subcontractor's allocable share of any adjustment in Contractor's contract with the Owner. Subcontractor's allocable share shall be reasonably determined by Contractor, after allowance of Contractor's normal overhead, profit, and other interest in any recovery by making a reasonable apportionment, if applicable, between Subcontractor, Contractor, and other subcontractors or persons with interest in the adjustment.

#### 9.2.2 Submission of RFCs in Good Faith with Sufficient Documentation.

Subcontractor shall only submit RFCs in good faith. Contractor has the right to require documentation of all costs incurred as a result of a RFC or change or adjustment to the Subcontract Price. Unless the Contract Documents require the Contractor to submit the support earlier, Subcontractor shall support its RFC within seven (7) days of the Subcontractor's initial submission and notice of RFC, with the following: (i) the provisions of the Agreement and Contract Documents that justify the Subcontractor's RFC; (ii) a statement that expressly states the aggregate amount of the Subcontractor's RFC; (iii) adequate description of the aggregate amount of the Subcontractor's RFC to allow the Contractor and Owner to review the RFC; (iv) invoices, time sheets, and back-up for Subcontractor's RFC; and (v) any additional information required by the Contract Documents or by law. If the Contract Documents require the Contractor to submit the support earlier than seven (7) days after the Subcontractor's initial submission, he Subcontractor shall submit this support in time for the Contractor to comply with the applicable provisions of the Contract Documents.

#### 9.3 Changes Not Involving the Owner or Contract Documents.

For changes ordered by Contractor and not initiated by the Owner, Subcontractor shall be entitled to an equitable adjustment in the Subcontract Price.

#### 9.4 Price Quotations.

If requested by Contractor, Subcontractor shall, within seven (7) calendar days, submit a reasonable price quotation for proposed changes to the Agreement. If Subcontractor fails to do so and Contractor is required to submit a price quotation to the Owner, Contractor shall use its best estimate of the proposed changes as it affects the Subcontractor in its quotation to the Owner, which estimate shall be the maximum adjustment to the Subcontract Price due to Subcontractor.

#### 9.5 Subcontractor Markups and Documentation.

The maximum Subcontractor markup for labor, material and equipment costs incurred due to changes or adjustments to the Subcontract Price is the lesser of (i) ten percent (10%) for overhead and five percent (5%) for profit or (ii) the markup stated in the Contract Documents.

### 10. TERMINATION.

#### 10.1 Termination for Default.

With respect to the Agreement or change order thereto, if, in the opinion of Contractor, Subcontractor shall at any time (1) refuse or fail to provide sufficient, properly skilled workmen, or materials of the proper quality, (2) fail to make payment to its subcontractors, suppliers, or materialmen, (3) fail in any respect to prosecute the Work according to the current schedule(s), (4) cause, by any action or omission, the stoppage or delay of, or interference with, the work of Contractor or any other builders or subcontractors, (5) disregard laws, ordinances, rules, regulations, or orders of the public authority having jurisdiction, or (6) fail to comply with the provisions of the Agreement or the Contract Documents, then, after three (3) days' written notice, Contractor, at its option, without voiding the other provisions of the Agreement and without notice to the sureties, if any, may (i) take such steps as are necessary to overcome the condition, in which case Subcontractor shall be liable to Contractor for the cost thereof, (ii) terminate the Agreement for default, and/or (iii) seek specific performance of Subcontractor's obligations hereunder, it being agreed by Subcontractor that specific performance may be necessary to avoid irreparable harm to Contractor or the Owner. In the event Contractor elects to take such steps as are necessary to overcome the condition, Contractor shall be entitled to withhold from any payments otherwise due Subcontractor the costs and liabilities incurred by Contractor to overcome same. In the event of termination for default, Contractor may, at its option (a) enter on the premises and take possession, for the purpose of completing the Work, all materials and equipment of Subcontractor, (b) require Subcontractor to assign to Contractor any or all of Subcontractor's subcontracts, purchase orders, and other agreements involving the Project, and/or (c) either itself or through others complete the Work by whatever methods Contractor may deem expedient. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the Work shall be fully completed and accepted by the Owner. At such time, if the unpaid balance of the price to be paid shall exceed the expenses incurred by Contractor, such excess shall be paid by Contractor to Subcontractor. If such amount due Contractor shall exceed such unpaid balance, then Subcontractor shall pay Contractor the difference.

#### 10.2 Termination for Convenience.

Contractor shall have the right to terminate the Agreement for its own convenience for any reason or no reason by providing Subcontractor with a written notice of termination, to be effective upon receipt by Subcontractor. If Subcontractor is terminated for convenience, Subcontractor shall be entitled to be paid a portion of the Subcontract Price based on the reasonable value of work properly performed prior to termination, plus reasonable direct closeout costs. In no event shall Subcontractor be entitled to recover anticipated profits on unperformed portions of the Work. Subcontractor's remedy under this Section 10.2 shall be exclusive.

#### 10.3 Wrongful Termination.

If Contractor wrongfully exercises any option under Paragraph 10.1 above, Subcontractor's exclusive remedy will be the conversion of the Termination for Default to a Termination for Convenience.

## 11. CLAIMS AND DISPUTES.

### 11.1 Due to Owner or Contract Documents.

In case of any dispute between Contractor and Subcontractor arising out of any action of the Owner or involving the Contract Documents, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to the Owner by the terms of the Contract Documents and by any and all preliminary and final decisions or determinations made by the party, board, or court so authorized in the Contract Documents, or by law, whether or not Subcontractor is a party to such proceedings. In case of such dispute, Subcontractor will comply with all provisions of the Contract Documents allowing a reasonable time for Contractor to analyze and forward to the Owner any required communications or documentation. Contractor will, at its option, (1) present to the Owner, in Contractor's name, or (2) authorize Subcontractor to present to the Owner, in Contractor's name, all of Subcontractor's claims and answer the Owner's claims involving Subcontractor's Work, whenever Contractor is permitted to do so by the terms of the Contract Documents. If such dispute is prosecuted or defended by Contractor, Subcontractor agrees to furnish all documents, statements, witnesses, and other information required by Contractor, and to pay or reimburse Contractor for Subcontractor's allocable share of costs incurred in connection therewith, including, without limitation, attorneys' fees. The Subcontract Price shall be adjusted by Subcontractor's allocable share determined in accordance with Paragraph 9.1, above.

#### 11.1.1 Submission of Claims in Good Faith with Sufficient Documentation.

Subcontractor shall only submit claims in good faith. Contractor has the right to require documentation of all costs incurred as a result of a claim or change or adjustment to the Subcontract Price. Unless the Contract Documents require the Contractor to submit the support earlier, Subcontractor shall support its claim within seven (7) days of the Subcontractor's initial submission and notice of claim, with the following: (i) the provisions of the Agreement and Contract Documents that justify the Subcontractor's claim; (ii) a statement that expressly states the aggregate amount of the Subcontractor's claim; (iii) adequate description of the aggregate amount of the Subcontractor's claim to allow the Contractor and Owner to review the claim; (iv) invoices, time sheets, and back-up for Subcontractor's claim; and (v) any additional information required by the Contract Documents or by law. If the Contract Documents require the Contractor to submit the support earlier than seven (7) days after the Subcontractor's initial submission, he Subcontractor shall submit this support in time for the Contractor to comply with the applicable provisions of the Contract Documents.

### 11.2 Not Involving Owner or Contract Documents.

With respect to any controversy between Contractor and Subcontractor not involving the Owner, Contractor shall issue a decision, which shall be followed by Subcontractor, without interruption, deficiency, or delay. If the Subcontractor is correct as to the controversy, Subcontractor shall be entitled to an equitable adjustment in the Subcontract Price and, if applicable, Subcontract Schedule or Time, as its sole remedies. Notification of any such claim for equitable adjustment must be asserted in writing by Subcontractor within ten (10) days of the occurrence of the event giving rise to the claim; otherwise, no such claim is valid and the claim is deemed waived.

### 11.3 Dispute Resolution.

#### 11.3.1 Direct Discussions.

The Parties shall endeavor to resolve any dispute arising from or relating to this Agreement or the alleged breach thereof through Direct Discussions. All claims by the Subcontractor seeking adjustment or interpretation of contract terms, payment of money, extension of time, or other relief with respect to the Subcontract, shall be subject to dispute mitigation as a condition precedent to mediation, arbitration, or litigation. Said dispute mitigation must consist of Direct Discussions between representatives of Subcontractor and Contractor with the necessary authority to resolve the controversy and sufficient independence from the controversy to act reasonably in seeking a mutually reasonable business outcome. The representatives shall meet in person to conduct such discussions in Fairfax County, Virginia, unless the Contractor agrees in writing to meet in another location mutually convenient to the Parties.

#### 11.3.2 Mediation.

To the extent not resolved under § 11.3.1. above, any dispute arising from or relating to the Agreement or the alleged breach of the Agreement will, at Centennial's sole option, be submitted for mediation administered by the American Arbitration Association under its Construction Industry Mediation Procedures. Should Centennial opt to mediate, the mediation shall take place in Fairfax County, Virginia.

#### 11.3.3 Arbitration.

Should Centennial opt not to mediate or, alternatively, should the Parties be unable to resolve the dispute through mediation, the parties further agree that any unresolved dispute arising out of or relating to the Agreement or the alleged breach of the Agreement shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules, subject to the exceptions set forth in §§ 11.3.4 and 11.3.5, below. All claims, demands for arbitration or counterclaims

must contain a statement that expressly states the aggregate amount of the party's claims. The arbitration shall take place in Fairfax County, Virginia, and shall be governed by the laws of the place of the Project. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The foregoing agreement to arbitration shall be specifically enforceable in any court of competent jurisdiction.

#### 11.3.4 Limitations on Discovery and Awards.

If the amount in dispute is less than or equal to seventy-five thousand dollars (\$75,000.00), discovery is limited to written document requests and the exchange of documents, with all other discovery, including depositions, explicitly excluded. If the amount in dispute is over seventy-five thousand dollars (\$75,000.00), discovery will consist of written discovery, the exchange of documents, and no more than five (5) depositions of four (4) hours or less each. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrator(s) shall have no authority to award punitive damages or other damages not measured by the prevailing party's actual damages, except as required by statute. The arbitrator(s) shall not award consequential damages in any arbitration initiated under the Agreement. The standard provisions of the Construction Rules apply except as otherwise noted herein. The arbitrator(s) shall have the authority to allocate arbitration fees and costs among the parties, but may award attorneys' fees only where explicitly permitted by law or contract provision.

#### 11.3.5 Number of Arbitrators.

Unless the amount in dispute exceeds two hundred and fifty thousand dollars (\$250,000), a single arbitrator shall hear any controversy that may arise under this Agreement. If the amount in dispute is equal to or exceeds two hundred and fifty thousand dollars (\$250,000), Centennial, at its sole option, may bring suit in any court of competent jurisdiction or elect to pursue arbitration before a panel of three arbitrators. Otherwise, such disputes will be heard by a single arbitrator.

#### 11.3.6 Confidentiality.

Except as required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties. The Parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witnesses. In such event, the other party shall be required to present such evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.

#### 11.3.7 Disputes Involving the Owner or the Contract Documents.

If a dispute or claim of any value involves or is alleged to involve the Owner or arises from the Owner's Contract Documents, Centennial, at its sole option, may bring suit in a court of competent jurisdiction or otherwise pursue resolution of the claim through the Owner's Claims process as contemplated by §§ 9.2 and 11.1, above. Should Centennial opt to bring suit in a court of competent jurisdiction or otherwise pursue resolution of the claim through the Owner's Claims process, the Subcontractor is explicitly barred from initiating or pursuing any arbitration or litigation until that process is complete.

#### 11.4 **Written Notice.**

Notwithstanding any other provisions of the Agreement or Contract Documents, all claims by Subcontractor seeking adjustment or interpretation of contract terms, adjustment to the Subcontract Price, adjustment to the Subcontract Schedule, or other relief with respect to the Subcontract, must be made in writing within ten (10) days after the occurrence of the event giving rise to the claim; otherwise, Subcontractor waives such claim.

#### 11.5 **Claims Against Subcontractor.**

In the event that a mechanic's lien claim, payment bond claim, or other claim is filed against Contractor, the Owner or Contractor's payment bond by any employee, Lower Tier Subcontractor, Lower Tier Supplier, or other person in relation to the Work of Subcontractor, Subcontractor shall have the claim discharged by posting a bond with appropriate authorities, or otherwise, within ten (10) days of notice thereof. In the event such claim is not so discharged, Contractor shall have the right to terminate this Agreement – and any other agreements between the Parties – for default and/or bond-off said lien(s) or claim(s), and recover from Subcontractor all costs incurred as a result thereof, as described in Paragraph 6.1, above.

#### 11.6 **Continuing Performance Required.**

Pending final resolution of any claim, dispute or other matter in question between Contractor and Subcontractor, Subcontractor shall continue performance under the Agreement without unnecessary delay.

#### 11.7 **Contractor Payment Bond.**

The terms and conditions of the Agreement are incorporated by reference into any payment bond posted by Contractor for the Project. Subcontractor shall ensure that all Lower Tier Subcontractors' and Lower Tier Suppliers' claims against the Contractor's payment bond are subject to the same requirements and conditions as are applicable to any Subcontractor claim against the



Contractor's payment bond, including, without limitation, all conditions precedent to the recovery of amounts from the payment bond surety.

## **12. WARRANTY.**

Subcontractor warrants its Work to Contractor on the same terms, and for the same period, as Contractor warrants the Work to the Owner under the Contract Documents. With respect to Subcontractor's Work, Subcontractor shall perform all warranty obligations and responsibilities assumed by Contractor for Subcontractor's Work under the Contract Documents.

## **13. INSPECTION AND ACCEPTANCE.**

### **13.1 Inspection, Rejection and Replacement.**

Subcontractor shall provide appropriate access to the Work at all reasonable times for inspection by Contractor or the Owner, whether at the Project site or at any place where the Work may be in preparation, manufacture, storage, or installation. Subcontractor shall promptly replace or correct any Work which Contractor or the Owner may reject as failing to conform to the requirements of the Agreement or Contract Documents. If Subcontractor does not do so within a reasonable time, Contractor shall have the right to do so, and Subcontractor shall be liable to Contractor for the cost thereof as stated in Paragraph 6.1, above. If, in the opinion of Contractor, it is not expedient to correct or replace all or any part of rejected Work, then Contractor at its option, may deduct from the payments due or to become due to Subcontractor such amount as, in Contractor's reasonable judgment, will represent (i) the difference between the fair value of the rejected Work and the value thereof if the Work complied with the Subcontract, or (ii) the cost of correction, whichever is higher.

### **13.2 Remedy for Wrongful Rejection.**

Subcontractor's exclusive remedy for wrongful rejection of Work pursuant to this Article 13 is limited to Contractor's remedy under the Contract Documents if rejection is by the Owner or by Contractor at request of the Owner.

### **13.3 Use Not Acceptance.**

The Work shall be accepted according to the terms of the Contract Documents. However, unless otherwise agreed to in writing, occupancy or use of the Work by the Owner or Contractor shall not constitute acceptance of the Work.

## **14. LABOR.**

### **14.1 Objections by Owner or Contractor.**

Neither Subcontractor, Lower Tier Subcontractors, nor Lower Tier Suppliers shall employ anyone for the Work whose employment may be objected to by Contractor or the Owner. Subcontractor further agrees that it will, at the request of Contractor, for just cause, forthwith discharge and remove from the Project any person designated by Contractor. The right of Contractor to request the discharge of any persons employed by Subcontractor or its Lower Tier Subcontractors or Lower Tier Suppliers shall not be construed to constitute evidence or an admission that Contractor is the employer of any persons employed by Subcontractor or its Lower Tier Subcontractors or Lower Tier Suppliers. The discharge or removal from the Project of any person will not be the basis for the Subcontractor to obtain a change in the Subcontract Price or Subcontract Time.

### **14.2 Strikes or Work Stoppage.**

Should any workers performing the Work engage in a strike, other work stoppage, or cease to work due to picketing or a labor dispute of any kind, said circumstances may be deemed a failure to perform the Work on the part of the Subcontractor and subject Subcontractor to the conditions and terms set forth in Article 10, above.

### **14.3 Labor Standards, Wage Rates and Certified Payrolls.**

Subcontractor shall comply with all labor standards, wage rates, and certified payroll procedures identified in the Agreement and required by law. If the Work includes any obligation to report the wages paid to the workers performing on the Agreement and unless otherwise stated in the Subcontract, the Subcontractor shall report the wages paid to the Contractor using a software service called LCP Tracker. Unless otherwise stated in the Subcontract, Subcontractor shall not submit wage reports to the Contractor on paper.

## **15. EQUAL OPPORTUNITY.**

### **15.1 No Discrimination.**

In connection with the performance of Work, Subcontractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, age, national origin or ancestry, sex, sexual orientation, gender orientation, gender identity, gender expression, disability, marital status, veteran's status, status as a disabled veteran or a veteran of the Vietnam Era, or other protected categories. The aforesaid provision applies to, but is not limited to, decisions concerning: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. Subcontractor agrees to 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.

#### 15.2 Segregated Facilities.

Subcontractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Subcontractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this Article

#### 15.3 Books and Records.

Subcontractor shall permit access to its books, records, and accounts by Contractor, the Owner, representatives of the Contractor, and representatives of the Owner, for purposes of investigation to ascertain compliance with the provision of this Article 15.

#### 15.4 Termination.

In the event of Subcontractor's noncompliance with the equal opportunity provisions of this Article 15, the Contractor may terminate the Agreement for default as provided in Paragraph 10.1.

#### 15.5 Subcontractors and Suppliers.

Subcontractor shall include the provisions of this Article 15 in every subcontract, purchase order, or other agreement the Subcontractor issues to a Lower Tier Subcontractor or Lower Tier Supplier. The requirements of this Article 15 shall be in addition to any equal opportunity provisions of the Contract Documents.

### 16. INFORMATION REQUIRED BY OWNER.

In addition to the information to be provided by Subcontractor pursuant to other provisions of the Agreement, Subcontractor hereby agrees to provide, at no additional cost to Contractor, and in a prompt and timely fashion so as not to disrupt the performance of Work under this Agreement or the contract between Contractor and the Owner, any and all additional information relating to the Agreement and Work which is required by the Contract Documents or by law.

### 17. CONFIDENTIALITY.

#### 17.1 Confidential Information.

To the extent authorized by the law, Contractor and Subcontractor may wish, from time to time, in connection with Work contemplated under the Subcontract, to disclose confidential information to each other including plans, specifications, pricing information, information about markups, product data, customer information, or other information or documentation bearing a label "Confidential", "Strictly Confidential" or "Not for Distribution" ("**Confidential Information**"). Each party will use reasonable efforts to prevent the disclosure of any of the other party's Confidential Information to third parties, provided that the recipient party's obligation shall not apply to information that is not disclosed in writing or reduced to writing and so marked with an appropriate confidentiality legend within thirty (30) days of disclosure; is already in the recipient party's possession at the time of disclosure thereof; is or later becomes part of the public domain through no fault of the recipient party; is received from a third party having no obligations of confidentiality to the disclosing party; is independently developed by the recipient party; or is required by law or regulation to be disclosed. In the event that information is required to be disclosed by law or regulation, the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under such law or regulation.

#### 17.2 Trade Secrets.

Subcontractor agrees to maintain the strict confidence of Contractor's trade secrets. This includes information on the engineering, management, sales, and financial aspects of Contractor's business. Notice is hereby provided that pursuant to 18 USC § 1833(b), an employee, consultant or contractor of the Contractor may not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of an employer's trade secrets, so long as such disclosure is made solely: (a) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; and/or (b) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Additionally, pursuant to 18 USC § 1831 et seq., an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose a trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order. The foregoing immunities provided under 18 USC § 1831 et seq. do not apply to any disclosure of Confidential Information or trade secrets of Contractor's clients, customers or counterparties, or of any other third parties. For purposes of this paragraph, "trade secret" has the meaning set forth in 18 USC § 1839.

### 18. PROVISIONS GOVERNING WORKING CONDITIONS.

#### 18.1 Submittals.

Subcontractor shall deliver to Contractor copies of shop drawings, cut sheets, samples, and materials lists required by Contractor or the Contract Documents for the completion of the Work ("**Submittals**") within sufficient time so as not to delay performance of the Project or within sufficient time for Contractor to submit the same within the time stated in the Contract Documents, whichever is

earlier. Any deviation from the Contract Documents shall be clearly identified on the Submittals. Notwithstanding any general approval granted by Contractor or the Owner, all work shall strictly conform to the Contract Documents.

For each piece of installed equipment, Subcontractor shall provide at least three (3) copies of Operational and Maintenance Manuals for that equipment, unless additional copies are required by the Contract Documents. Subcontractor shall provide these manuals to Contractor when the Work is approximately ninety percent (90%) completed. Submission of these manuals is a condition precedent to final payment.

Equipment warranty sticker containing warranty information, date of installation, and applicable service information must be attached to each piece of equipment installed by the Subcontractor of a Lower Tier Subcontractor.

During construction the Subcontractor shall maintain two (2) current sets of as-built drawings, which reflect changes and deviations from the contract drawings as the Work is placed. These drawings will be issued to the Contractor and will be a part of the "As Built" information at the completion of the Work. The Owner may duplicate, use, and disclose in any manner and for any purpose drawings delivered under this Agreement.

Subcontractor shall show the contract number and identifying item numbers, if applicable, on all data or transmittals submitted.

#### **18.2 Reporting to Contractor.**

Subcontractor shall submit a Daily Report to Contractor identifying: staffing, work descriptions and equipment used. The report format must be acceptable to Contractor. Unless otherwise stated in the Subcontract, the Subcontractor and the Lower Tier Subcontractor shall submit daily reports using a software service called LCP Tracker.

#### **18.3 Working Hours.**

Unless specifically otherwise provided in the Subcontract, the working hours for the Subcontractor shall conform to regular working hours. All job site work required hereunder shall be performed Monday through Friday between the hours of 7:00 AM and 4:30 PM. The Subcontractor shall obtain approval for any deviation from the regular working hours or days by submitting a written request to be received at least three (3) working days in advance for the approval of the Contractor. The Contractor retains the option to revise the Subcontractor's work schedule as necessary to accommodate the project schedule, upon written notice to the Subcontractor.

#### **18.4 Shutdowns, Cutovers, and Interference with Operations.**

Shutdowns and cutovers, depending upon their types, may be required to be scheduled on weekends, at night or during holiday periods. Any outages must be scheduled with a minimum of fourteen (14) days advance notice to the Owner and the Contractor, unless the Contract Documents require a longer notice period to the Owner. The Subcontract Price is deemed to include all necessary overtime and all premium time, if any, that is required by the Subcontractor to complete the shutdowns or cutovers, including the attendance of any trades that are required as standby personnel, but are not employed by the Subcontractor unless specifically itemized and excluded in the Subcontract. Any unscheduled outage or interruption of service must be restored immediately; this includes any and all overtime or expediting necessary to restore service as early as possible and shall be performed without additional cost to the Contractor.

The Subcontractor agrees to carefully schedule with the Owner and the Contractor all activities which may in any way disrupt or interfere with operation of the Owner's facilities, to cease any such activities immediately upon request from the Owner or upon the reasonable request of the Contractor, and not to resume such activities until approval is obtained from the Owner and the Contractor.

#### **18.5 Hoisting.**

It will be the sole responsibility of the Subcontractor to supply his own hoisting. All hoisting supplied by the Subcontractor will require the prior approval of the Contractor.

#### **18.6 Existing Facilities.**

The Subcontractor shall be responsible for the protection of all existing facilities and utilities from damage during the performance of the work. Unless otherwise stated in the Subcontract, all barricades, flagging, bridging, temporary protection, and other facilities necessary to protect personnel and facilities shall be provided by the Subcontractor as required for the Work and shall be included in the Subcontract Price.

The Subcontractor shall include the cost of all cutting, fitting, or patching of its Work, which may be required in connection with the proper installation of its Work, as necessary to fit the work of other subcontractors or existing conditions. For example, cutting of concrete shall be done on two sides to avoid spalling.

The Subcontract Price includes any and all non-continuous Work, required by Contractor and necessary to meet job progress. The Subcontractor shall also recognize that completion of portions of the Work may be required in order to provide occupancy or parts of the Project prior to its final completion and that such work may not necessarily be in sequence with other work by the Subcontractor. The cost of all such non-continuous Work shall be included in the Subcontract Price.

No structural concrete or steel is to be cut without permission of the Contractor. The Subcontractor shall not endanger any work by cutting or digging and shall not cut, damage, or alter the work of any other subcontractor and shall be held responsible for any such cutting, damage, or alterations. Approval shall be received from the Contractor before any cutting, fitting, or patching. No digging, cutting, welding, or burning will be done without the appropriate permits.

#### 18.7 Meetings

Each Subcontractor shall have responsible representation at any coordination meetings held when scheduled by the Contractor or the Owner. These meetings will be held as often as required to arrange for satisfactory coordination of all trades so as not to impede job progress and to accomplish Work in a manner that will ensure the desired results.

#### 18.8 Covering Work

The Subcontractor shall not encase or cover the work of other subcontractors or Work installed by the Subcontractor until same has been completed and approval has been obtained from the Contractor and required authorities. If the Subcontractor does cover up such Work which is not completed and approved, the Contractor may require same to be exposed for inspection at no charge to the Contractor. The Subcontractor shall assume all costs for replacement of all finished or partially finished work required for such inspection.

#### 18.9 Layout

Subcontractor shall be responsible for all layout of its Work from control lines or other reference points defined by the Contractor. The Subcontractor shall be responsible for verifying all control lines or reference points defined by the Contractor and shall fully understand the layout prior to using it. In the event of an error in the Subcontractor's layout, the Subcontractor shall correct all defective Work at no cost to the Contractor.

#### 18.10 Work of Others

The Subcontractor shall review the surfaces and work provided by others, and shall notify the Contractor, in writing, of any defect detrimental to proper procedures, prior to the commencement of its Work; otherwise, it shall be deemed that the Subcontractor has accepted the conditions of such surfaces and work and will be liable for all consequences resulting therefrom.

#### 18.11 Subcontractor's Personnel

Subcontractor hereby acknowledges and agrees that the Subcontractor's supply of consistent and competent supervision is essential to the timely and proper performance of the Work. The Subcontractor shall assign a full time on site supervisor acceptable to the Contractor from start of its Work until final acceptance. The Subcontractor shall not remove or replace its site supervisor without the prior written consent of Contractor, which consent shall not be unreasonably withheld.

Subcontractor shall furnish work and cell phone numbers for its site supervisor, project manager, and general manager.

Subcontractor is fully responsible for the performance and conduct of its employees and the employees of its Lower Tier Subcontractors and Lower Tier Suppliers at all times while on the Project. The Subcontractor's employees, the employees of its Lower Tier Subcontractors and Lower Tier Suppliers shall conduct themselves in a proper, efficient, courteous and businesslike manner. The Subcontractor shall not allow its employees or the employees of its Lower Tier Subcontractors and Lower Tier Suppliers to perform work while under the influence of alcohol, drugs (include prescription, over the counter, or illicit drugs), or any other incapacitating agent.

The Subcontractor's employees and the employees of its Lower Tier Subcontractors and Lower Tier Suppliers will be required to wear identification badges any time they are on the Owner's facilities or at the Project site. Passes and badges issued to the Subcontractor or its employees shall not negate the requirement for employee identification.

When the Work requires it, the Subcontractor shall employ a "Competent Person", as defined by 29 CFR § 1926.32(f). The Subcontractor may not perform any Work at the site that requires a Competent Person unless a Competent Person employed by the Subcontractor is present. A work stoppage because of the lack of a Competent Person at the Site will not be the basis for the Subcontractor to obtain a change in the Subcontract Price or Subcontract Time.

#### 18.12 Storm Water and Erosion.

During the course of construction, the Subcontractor shall all necessary steps to prevent erosion at the construction site and to provide sedimentation controls at all outfalls to drainage ways including, but not limited to, area inlets, storm drain pipes, ditches, and roadway gutters related to Subcontractor's work and its staging areas in accordance with any regulations, Owner requirements, and applicable storm water management plan. The Subcontractor shall include the costs to comply with these requirements in its Subcontract Price.

#### 18.13 Temporary Facilities.

Subcontractor shall, as a part of the Subcontractor Price, supply, install, properly maintain and remove all temporary construction equipment, facilities, utilities and consumables necessary for full and complete performance of the Work. Such items shall include, but not be limited to: (i) all temporary buildings, including change rooms, (ii) first aid facilities, (iii) fuels and lubricants, (iv) heating fuels, (v) transportation facilities on and off site, (vi) communication facilities, (vii) compressed air and gases, (viii) maintenance of

Subcontractor's laydown, storage and work areas and roads within such areas, (ix) electric distribution wiring, (x) connections to, and disconnections from, the power source shall be by the Subcontractor, (xi) all cranes and other necessary equipment for lifting and moving equipment, (xii) all stress-relieving equipment and complete stress relieving operations, (xiii) all small tools, (xiv) all standard expendable or consumable construction items and supplies, (xv) site clean-up and conveyance to dumpsters, and (xvi) containers, ice, cups for drinking water.

#### 18.14 **Storage Space.**

Due to the limited availability of storage space on the jobsite, Subcontractor shall coordinate the delivery of all equipment and materials to allow for timely installation and erection. Subcontractor shall be responsible for the storage, protection, and security of all materials falling under its jurisdiction on the jobsite. Materials will be received only during established working hours, Monday through Friday ("**Delivery Hours**"). Subcontractor shall submit to Contractor, for review and approval, the size and location of the lay-down area requirements.

### 19. **SITE SAFETY REQUIREMENTS**

#### 19.1 **SDS Information.**

Prior to the start of work, the Subcontractor shall submit to the Contractor a complete list of all products that will be used incidental to performing the Subcontractor's Work, including solvents and other incidentals that could cause hazard to life or property. The Subcontractor shall provide the Contractor an updated list from time to time when new materials are required. The Subcontractor shall include with the list of products a current Safety Data Sheet (SDS) for each product. No Work shall start until such time as the above requirements are met. Further, submission of the information required by this paragraph is a condition precedent to payment by Contractor and Contractor's surety.

#### 19.2 **Stop Work Orders.**

If, in the opinion of the Contractor, the Subcontractor, its Lower Tier Subcontractors, or its Lower Tier Suppliers are conducting its Work in an unsafe manner, the Contractor retains the right to verbally issue a Stop Work direction to the Subcontractor. The Subcontractor shall immediately stop its Work and take all actions necessary to correct the condition and provide a safe workplace. Once the Subcontractor notifies the Contractor the condition has been corrected and the Contractor is satisfied the Subcontractor has corrected the deficient condition, the Subcontractor can resume Work. If it is adjudicated that the Contractor stopped Work in bad faith, the Subcontractor shall be exclusively entitled to a schedule extension proportionate to the length of the bad faith Work stoppage. A Work stoppage because of an unsafe condition at the Site will not be the basis for the Subcontractor to obtain a change in the Subcontract Price or Subcontract Time.

#### 19.3 **Safety Orientation Meeting.**

Each employee of the Subcontractor, Lower Tier Subcontractor, and Lower Tier Supplier may be required to attend a safety orientation meeting upon entering the jobsite. The Subcontract Price shall include all costs for Subcontractor's employees and the employees of its Lower Tier Subcontractors and Lower Tier Suppliers to attend these orientations.

#### 19.4 **Fall Hazards.**

Barricades, railing, opening covers, and other protective devices which have been installed by the Contractor or others and removed by Subcontractor's employees for any reason must be guarded by the Subcontractor while open and immediately replaced by the Subcontractor prior to the Subcontractor or its employees leaving the immediate area of the removal. Additionally, in the areas where the Subcontractor is vertically transporting materials or personnel, the Subcontractor shall provide secondary railing, barricades, warning signs, spotters, and other protective measures as required by OSHA to secure the safety of the entire hoisting area.

#### 19.5 **Prohibited Items.**

No radios, CD players, iPods, or other portable music players are allowed on the job site. Additionally, neither the Subcontractor, the Subcontractor's employees, nor anyone the Subcontractor may be responsible for shall use any music or communications device while at the job site if the use of the device interferes with the person's ability to hear and respond to warnings, commands, or directives. A hands-free device for a cellular telephone or two way radio is considered a communications device for the purpose of complying with this section.

No intoxicants are allowed on the job site. This includes liquor, beer, wine, drugs or hallucinogens of any kind whatsoever. Additionally, no person who under the influence, or in the opinion of the Contractor under the influence, of any of the above shall be allowed on the job site. The Subcontractor or Contractor will remove any worker from the Project immediately and said workman shall not return if, in the Contractor's opinion, the worker is under the influence of an intoxicant. The removal of a worker because of the suspicion that the worker is under the influence, unless the Contractor's removal was in bad faith, will not be the basis for the Subcontractor to obtain a change in the Subcontract Price or Subcontract Time.

#### 19.6 **Incident and Visitor Reporting.**

In the event of a near miss, accident, injury, or fatality, the Subcontractor agrees to notify the Contractor immediately and to provide a copy of all Accident and Workmen's Compensation reports to the Contractor within twenty four (24) hours of the near miss,

accident, injury, or fatality. The Subcontractor shall also notify OSHA, as required by law. Subcontractor agrees to notify the Contractor as soon as possible, but never more than fifteen (15) minutes, after the start of any visit to the Project site by an Owner's, federal, state, or local safety official.

#### 19.7 **Scaffolding.**

If the Work required involves the use of scaffolding or any elevated platforms, the scaffolding and elevated platforms must be inspected daily by a Competent Person employed by the Subcontractor. On no less than a weekly basis, the Subcontractor shall certify to the Contractor that daily inspections have been made. The Subcontractor's certifications must identify: (i) the name of the Subcontractor's Competent Person making the inspection, (ii) the date of each inspection, (iii) any deficiencies encountered during the inspection, and (iv) the corrections performed to remedy the deficiencies. In the event of any deficiency, the Subcontractor shall immediately suspend use of the scaffold until all deficiencies are corrected and a Competent Person inspected the scaffolding.

#### 19.8 **Drug Free Workplace.**

The Subcontractor shall promote a drug free workplace. In the event of an accident, incident, or recordable event, the Subcontractor shall require its employees, agents, subcontractors, and any employees thereof involved in the event to submit to a drug test performed by a qualified medical laboratory, unless prohibited by law. In the event the employee or employees involved in the event fail to submit to such test within twenty four (24) hours of the event, said employee or employees shall be prohibited from returning to the project site for the duration of the Project. The removal of a person from the Site because the person refused or failed to submit to a drug test will not be the basis for the Subcontractor to obtain a change in the Subcontract Price or Subcontract Time.

## **20. MISCELLANEOUS PROVISIONS.**

#### 20.1 **Inconsistencies and Omissions**

Should inconsistencies or omissions appear in the Contract Documents or Subcontract, Subcontractor shall promptly notify Contractor in writing of same, and in any event, prior to performing any Work affected by such inconsistency or omission.

#### 20.2 **Owner Approvals**

Subcontractor warrants that it can and will obtain all requisite approvals from the Owner as to its eligibility to serve as a subcontractor, and that it can and will obtain the required approvals of all labor, materials, and equipment comprising the Work as required by the Contract Documents or Agreement.

#### 20.3 **Assignment and Subcontracting**

Subcontractor shall not assign or transfer the Subcontract, or funds due hereunder, without the prior written consent of Subcontractor's surety, if any, and Contractor. All Lower Tier Subcontractors and Lower Tier Suppliers awarded by Subcontractor are subject to the provisions of the Subcontract, and Subcontractor shall insert therein all provisions necessary to enable Subcontractor to comply with the terms hereof.

#### 20.4 **Patents and Royalties**

Subcontractor shall pay all royalties and license fees related to the Work. Subcontractor shall defend suits or claims for infringement of copyrights and patent rights related to the Work. **SUBCONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CONTRACTOR AND THE OWNER FROM AND AGAINST ALL DAMAGES, COSTS OR OTHER EXPENSES ON ACCOUNT THEREOF, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, EXPERT WITNESS FEES, AND COSTS IMPOSED BY THE FORUMS FOR DISPUTE RESOLUTION.**

#### 20.5 **Laws, Regulations, and Ordinances**

Subcontractor shall strictly comply with all federal, state, and local laws, codes, ordinances, and regulations applicable to the Work and the Agreement. Subcontractor shall be licensed to operate under the laws of the jurisdictions where the Project is located.

#### 20.6 **Taxes**

Except as otherwise provided by the Contract Documents, Subcontractor agrees to pay, comply with, and hold Contractor harmless from and against the payment of all contributions, taxes, or premiums which may be payable by it under federal, state, or local laws arising out of performance of the Subcontract, and all sales, use, or other taxes of whatever nature levied or assessed against the Owner, Contractor, or Subcontractor arising out of the Subcontract, including any interest or penalties. Subcontractor waives any and all claims for additional compensation because of any increase in the aforementioned taxes unless payment for said increase is specifically provided for in the Contract Documents.

#### 20.7 **Permits.**

Subcontractor shall obtain and pay for all permits, licenses, fees, and certificates of inspection necessary for the prosecution and completion of the Work, and shall arrange for all necessary inspections and approvals by public officials.

#### 20.8 **Health and Safety**

Subcontractor and all its employees and agents shall comply with the requirements of the Occupational Safety and Health Act as amended; the then current edition of the Department of the Army, Corps of Engineers, Safety and Health Requirements Manual EM385-1-1, and all other applicable health and safety laws and regulations. **TO THE EXTENT PERMITTED BY LAW, SUBCONTRACTOR**

SHALL INDEMNIFY AND HOLD CONTRACTOR AND THE OWNER HARMLESS FROM ALL LIABILITIES, LOSSES, COSTS, AND EXPENSES ATTRIBUTABLE TO THE FAILURE OF SUBCONTRACTOR OR ITS EMPLOYEES. LOWER TIER SUBCONTRACTORS, LOWER TIER SUPPLIERS, AND AGENTS TO COMPLY WITH ACTS, LAWS, AND REGULATIONS PERTAINING TO OCCUPATIONAL HEALTH AND SAFETY, INCLUDING, BUT NOT LIMITED TO, ANY FINES, PENALTIES, CORRECTIVE MEASURES, AND ATTORNEYS' FEES, EXPERT WITNESS FEES, AND COSTS IMPOSED BY ANY FORUM FOR DISPUTE RESOLUTION REGARDLESS OF CAUSE OR OF THE JOINT, COMPARATIVE, OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, OR SURETIES. If the Contractor notifies Subcontractor of a violation of any Act, Law, or Regulation pertaining to occupational health and safety for which Contractor deems Subcontractor to be responsible, Subcontractor agrees to immediately remedy said violation or bear the costs to have Contractor remedy the violation in accordance with the Paragraph 6.1, above. The Subcontractor shall also comply with the additional safety requirements stated in the Agreement.

**20.9 Authorized Representative.**

Subcontractor shall have a competent and experienced representative, authorized to act on its behalf and who is acceptable to Contractor, present at the site at all times during the performance of the Work regardless of whether the Work is being performed by the Subcontractors' own forces or the workers of a Lower Tier Subcontractor or Lower Tier Supplier.

**20.10 Notices.**

All notices to the Contractor must be addressed to the address and email address stated in the Subcontract. To be valid notice, the notice must be received by the Contractor at the email address provided and sent by overnight carrier (i.e. FedEx or UPS) to the address in the Subcontract and to Centennial Contractors Enterprises, Inc., ATTN: Legal Department, 11111 Sunset Hills Road, Suite 350, Reston, Virginia 20190.

All notices to the Subcontractor will be addressed to the address, email, or facsimile, at the addresses stated in the Subcontract and may be sent by any means the Contractor deems appropriate. Contractor may also provide notice to the Subcontractor delivering notice by hand to the Subcontractor's representative. Notice is deemed to have occurred at the time received by the recipient. Actual receipt of notice will constitute sufficient notice regardless of whether Contractor delivers notice in accordance with this Paragraph.

**20.11 Severability and Waiver.**

The partial or complete invalidity of any one or more provisions of the Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of the Agreement, or to exercise any right therein, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right as respects further performance.

**20.12 Complete Agreement.**

No change or modification of the Agreement shall be valid unless the change or modification is in writing and signed by the Parties. No waiver of any of the provisions of the Agreement or other agreements referred to herein by Contractor shall be valid unless in writing and signed by Contractor. The Agreement contains the entire agreement between the parties relating to the Work, and all prior negotiations between the Parties are merged into the Agreement and there are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, expressed or implied, between the Parties other than as herein set forth.

**20.13 Provisions Required by Law.**

Notwithstanding the provisions of Paragraph 20.12 above, each and every provision of any laws and clauses required by law to be inserted into the Subcontract shall be deemed to be inserted therein and incorporated by reference and the Subcontract shall be read and enforced as though such laws and clauses were expressly set forth therein.

**20.14 Successors.**

All terms of the Agreement bind upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns.

**20.15 Governing Law.**

Notwithstanding the place where the Subcontract may be signed by any of the Parties, the Parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with the laws of the jurisdiction where the Project is located.

**20.16 No Presumption.**

This Agreement shall be constructed without regard to any rule of construction or presumption against the drafter of the documents.