

VIRGINIA SUPPLEMENTAL TERMS AND CONDITIONS

VERSION 1.1, REVISED MAY 21, 2020

The following clauses apply to Work in the Commonwealth of Virginia. 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 *Virginia 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 Change Section 8.2 as follows:

Add to the end of the first sentence "or as provided in this Section 8.2"

Add the following new sentence to the end of Section 8.2:

"Upon Subcontractor's timely compliance with other provisions of this *Subcontract Agreement* regarding claim and dispute procedures and notice, Subcontractor may be entitled to an equitable adjustment for unreasonable delays in the performance of Subcontractor's Work which delay is caused by the acts or omissions of the Contractor or persons acting for the Contractor. For purposes of this Section, persons acting for the Contractor shall not include, among others, the Owner, and its agents, employees, or representatives, including but not limited to architects and engineers."

2. REGISTRATION OF SUBCONTRACTOR.

2.1 **State Registration of Subcontractor.** Subcontractor must be licensed or certified by the Virginia Department of Professional and Occupational Regulation for the work to be performed under the Subcontract Agreement. If the Subcontract Agreement is for one hundred and twenty thousand dollars (\$120,000) or more, or if the total value of all construction, removal, repair, or improvements undertaken by the Subcontractor within any twelve (12) month period is seven hundred and fifty thousand dollars (\$750,000) or more, the Subcontractor is required under Title 54, Chapter 11, Code of Virginia (1950), as amended, to show evidence of being licensed as a "Class A Contractor." (Note: non-Virginia licenses are not acceptable.) If the Subcontract Agreement is for seventy-five hundred (\$7,500) dollars or more but less than one hundred and twenty thousand dollars (\$120,000), the Subcontractor is required to show evidence of being licensed as a "Class B Contractor". If the Subcontract Agreement is for one thousand dollars (\$1,000) or more but less than seventy-five hundred dollars (\$7,500), the Subcontractor is required to show evidence of being licensed as a "Class C Contractor". The Subcontractor shall provide the Contractor a copy of the license.

3. WORKING CONDITIONS.

- 3.1 **Prior Notice of Excavation.** "Excavation" means an operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve inches (12") in depth for agricultural purposes, or road ditch maintenance that does not change the original road grade or ditch flow line. Before commencing any excavation, Subcontractor shall provide notice of the scheduled commencement of excavation to all owners of underground facilities or utilities, through locator services.
- 3.2 **Protection of Existing Structures, Equipment, Vegetation, Utilities, and Improvements.** Subcontractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation: at or near the Project site; and on adjacent property of a third party, the locations of which are made known to or should be known by Subcontractor. Subcontractor shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Subcontractor fails or refuses to repair the damage promptly, Owner or Contractor may have the necessary work performed and charge the cost to Subcontractor. Contractor shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place.
- 3.3 **Assignment of this Agreement to Owner.** Each subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that: (i) the assignment is effective only after termination of Prime Contract by Owner for cause pursuant to the Contract Documents and only for those Subcontracts which Owner accepts by notifying the

Subcontractor in writing; and (ii) after the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Contractor assumed in the Subcontract. The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

4. ANTI-DISCRIMINATION.

During the performance of this Subcontract, the Subcontractor agrees as follows:

- 4.1 The Subcontractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a *bona fide* occupational qualification reasonably necessary to the normal operation of the Subcontractor. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 4.2 Subcontractor, in all solicitations for advertisements for employees placed on behalf of the Subcontractor, will state that such Subcontractor is an equal opportunity employer.
- 4.3 Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Article.
- 4.4 During the performance of this Subcontract, the Subcontractor agrees to: (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Subcontractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor that the Subcontractor maintains a drug-free workplace.
 - 4.4.1 For the purposes of this subsection, a "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this subsection, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Subcontract Agreement.
- 4.5 Subcontractor will include the provisions of this section, entitled Anti-Discrimination, in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Lower Tier Subcontractor and Lower Tier Supplier.

5. WORK FOR A PUBLIC BODY.

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

- 5.1 **Availability of Funds.** It is understood and agreed between the Subcontractor and the Contractor that the Contractor shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Contract. The Contractor's extended obligations on *Subcontract Agreements* that include Owner funding through successive fiscal periods shall be contingent upon actual appropriations by the Owner for the successive periods (additional years).
- 5.2 **Right to Audit and Preservation of Records.**
 - 5.2.1 The Subcontractor shall maintain books, records, and accounts of all cash in accordance with generally accepted accounting principles and practices. The Owner, Contractor, or either's authorized representative shall have the right to audit the books, records, or accounts of the Subcontractor under any of the following conditions: (i) if the Subcontract Agreement is terminated for any reason in accordance with the *Standard Terms and Conditions* or the Contract Documents in order to arrive at equitable termination costs; (ii) in the event of a disagreement between the Subcontractor and Contractor or between the Contractor and Owner that implicates the Subcontractor's Work on the amount due the Subcontractor or Contractor under the terms of this *Subcontract Agreement*; (iii) to check or substantiate any amounts invoiced or paid which are required to reflect the costs of the Contractor or Subcontractor, or the Contractor's or Subcontractor's efficiency or effectiveness under this *Subcontract Agreement*, the Contract Documents, or in connection with extras, changes, claims, additions, backcharges, or other, as may be provided for in this *Subcontract Agreement*; or, (iv) if it becomes necessary to determine the Owner's rights, Contractor's rights, Contractor's obligations and Subcontractor's obligations under the Agreements or Contract Documents or to ascertain facts relative to any claim against the Contractor or Subcontractor which may result in a charge against the Owner or Contractor.
 - 5.2.2 These provisions for an audit grant the Owner and Contractor unlimited access normal working hours to the Subcontractor's books and records under the conditions stated above.

5.2.3 Unless otherwise provided by applicable statute, the Subcontractor from the effective date of final payment or termination hereunder, shall preserve and make available to the Owner for a period of three (3) years at all reasonable times at the office of the Subcontractor but without direct charge to the Owner or Contractor, all its records, documents, and other evidence bearing on the costs and expenses of the Subcontractor under this Agreement and relating to the work hereunder, or to the extent approved by the Contractor, photographs, micro-photographs, or other authentic reproductions thereof.

5.2.4 If the Owner's or Contractor's audit produces a claim against the Subcontractor, the Owner and Contractor may pursue all its legal remedies even though it has made all or part of the payments required by this Agreement.

5.2.5 If any audit by the Owner, the Contractor, or either's representatives discloses an underpayment discloses an underpayment by the Owner or Contractor, the Owner or Contractor may have the duty to pay any amounts found by the audit to be owed to the Subcontractor. If such audit discloses an over-payment, the Subcontractor shall have the obligation to reimburse the Owner or Contractor for the amount of the overpayment.

5.2.6 The Owner's and Contractor's right to audit and the preservations of records still terminate at the end of three (3) years as stated hereinabove. The Subcontractor shall include this "Right to Audit and Preservation of Records" clause in all subcontracts issued by it and it shall require same to be inserted by all Lower Tier Subcontractors in their subcontracts, for any portion of the work. Should Subcontractor fail to include this clause in any such contract or lower tier contract or otherwise fail to insure the Owner's and Contractor's rights hereunder, the Subcontractor shall be liable to Owner for all expenses and attorney's fees which Owner or Contractor may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to Owner from said persons under this clause. Such audit may be conducted the Owner, the Contractor, or either's authorized representative.

5.3 **Faith Based Organizations.** In accordance with VA. CODE § 2.2-4343.1, *et. seq.*, the Owner shall not (i) discriminate against a faith-based organization as defined in VA. CODE § 22.2-4343.1(B) on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in VA. CODE § 22.2-4343.1(F), or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

5.4 **Immigration Reform and Control Act of 1986.** By signing the Subcontract Agreement, the Subcontractor certifies that it does not and will not during the performance of this Contract for goods and/or services knowingly violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of unauthorized aliens as defined in the Federal Immigration Reform and Control Act of 1986, as amended.

5.5 **Americans with Disabilities Act (ADA).** The Subcontractor warrants that it complies with Virginia and federal disabilities laws and regulations. (Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*). Subcontractor hereby further warrants that the products or services it will provide under this Contract complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Subcontractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services at no additional cost to the Owner. **SUBCONTRACTOR FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER AND CONTRACTOR FROM ANY AND ALL CLAIMS ARISING OUT OF SUBCONTRACTOR'S FAILURE TO COMPLY WITH THE AFORESAID REQUIREMENTS.** Failure to comply with these requirements shall constitute a material breach of this Subcontract and shall be grounds for termination of the Subcontract Agreement by the Contractor.

5.6 **Rights Under Antitrust Laws.** The Subcontractor assigns to the Contractor any and all rights that it may have under the antitrust laws of the United States and the Commonwealth of Virginia in any way arising from or pertaining to this Subcontract Agreement. This provision is remedial in nature and is to be liberally construed by any court in favor of the Contractor.

6. WORK FOR THE SCHOOL.

When the Owner is a school district, the following clauses also apply to the Subcontractor's Work:

6.1 In accordance with VA. CODE § 22.1-296.1, Subcontractor shall certify that they and any of their employees, servants, agents or Lower Tier Subcontractors who will provide Work under this *Subcontract Agreement* and who will be in direct contact with the Owner's students: "Have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child."

6.2 For purposes of this requirement, "direct contact with students" means being in the presence of students on school property during regular school hours or during school-sponsored activities.

6.3 Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor and,

upon conviction, the fact of such conviction shall be grounds for the revocation of the Contract to provide such Work and, when relevant, the revocation of any license required to provide such Work.

- 6.4 The Subcontractor shall sign a certification as required by the Contractor or Owner that has been completed in its entirety. Any person, employee, Lower Tier Subcontractor, agent, officer, owner, or shareholder of the Subcontractor who will provide Work under this *Subcontract Agreement* and who will be in direct contact with the Owner's students shall meet the certification requirements.
- 6.5 This certification shall be binding throughout the contracted period and the Subcontractor shall provide the Contractor and Owner with immediate notice of any event which renders its certifications untrue.
- 6.6 Those persons required to register as a sex offender in any U.S. state, the District of Columbia, any U.S. territory or Indian Country shall not meet the requirements of this section. Such persons shall not be permitted on Owner's property.
- 6.7 All persons entering upon the Owner's property may be required to scan their valid driver's license in order to print a visitor's badge which includes the person's photo, name, and time of arrival. All visitors are required to wear their badge while on school property and sign out at the front office as they are leaving the building. As an added security feature, the scanning process now includes a cross reference to the national and state sex offender registry. If a visitor does not have a valid driver's license, staff may request an alternate government issued ID and manually check the visitor in through the system.

7. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.

Each and every provision of laws and clauses required by law to be inserted in this *Subcontract Agreement* and will be deemed to be inserted herein and incorporated by reference. The *Subcontract Agreement* will be read and enforced as though it were included and if—through mistake or otherwise—any such provision is not inserted or not correctly inserted, then upon the application of other party the *Subcontract Agreement* will be amended to make such insertion.