

WEST VIRGINIA SUPPLEMENTAL TERMS AND CONDITIONS

VERSION 1.0, REVISED MAY 1, 2020

The following clauses apply to Work in the State of West 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 *West 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. DOCUMENTS INCORPORATED BY REFERENCE.

1.1 The Parties agree that the Subcontract Agreement has identified separate writings that have been incorporated by reference into one agreement between the Parties. The Parties further agree that the Subcontract Agreement clearly and unambiguously identifies all writings incorporated into the Subcontract Agreement, including the Standard Terms & Conditions and these West Virginia Supplemental Terms and Conditions. The Parties further agree that there is no ambiguity about which documents are referenced by and incorporated into the Subcontract Agreement. The Parties agree that each has had an opportunity to review and have been provided with the opportunity for counsel of each party's choosing to review the Subcontract Agreement and each of the separate writings incorporated by reference into the Subcontract Agreement. Because each party has been provided with an opportunity to review the Subcontract Agreement and all separate writings incorporated by reference into the Subcontract Agreement, the Subcontractor releases, relinquishes, and waives all right to allege either the separate writings incorporated by reference surprised the Subcontractor or that the separate writings incorporated by reference create a hardship for the Subcontractor.

2. REGISTRATION OF SUBCONTRACTOR.

2.1 **State Registration of Subcontractor.** Subcontractor must be licensed or certified by the West Virginia Department of Labor for the work to be performed under the Subcontract Agreement. 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 **Employees.** In accordance with W. VA. C.S.R. § 28-4-4, the Subcontractor may only employ workers under the Subcontract Agreement that are legally authorized to work in the United States. Subcontractor must also require its Lower Tier Subcontractors to only employ workers under the Subcontract Agreement that are legally authorized to work in the United States.

4. WORK ON PRIVATE, NON-GOVERNMENTAL PROPERTY.

4.1 **Lien Waivers.** For projects with non-governmental clients on private property, Subcontractor hereby waives, relinquishes, and releases any and all liens, including without limitation, mechanics' liens and similar rights under applicable laws, which Subcontractor might or might not otherwise have under the law. Subcontractor further agrees to require its subcontractors and suppliers to hereby waive, relinquish, and release any and all liens, including without limitation, mechanics' liens and similar rights under applicable laws, which each might or might not otherwise have under the law. If a lower tier subcontractor or supplier files, asserts, claims, or otherwise seeks to obtain or enforce its lien rights against the Project or the property upon which the Project is located (a "Lien Claim"), the Subcontractor agrees to pay the amount of the Lien Claim, bond off the Lien Claim, or otherwise cause the discharge of the Lien Claim within seven (7) days of the notice from the Owner or Contractor of the Lien Claim. If the Subcontractor fails to remove the Lien Claim within seven (7) days, Contractor may cause the Lien Claim to be removed and Subcontractor shall pay, upon demand, all costs, including attorneys' fees, incurred by the Contractor to discharge the Lien Claim.

5. 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.