

## **MASTER SUBCONTRACT AGREEMENT**

This Subcontract Agreement, made as of the \_\_\_\_\_ day of \_\_\_\_\_ by and between Talisen Construction Corporation, having an office at 213 West 35th Street New York, NY 10001 (“Contractor”), and \_\_\_\_\_, having an office at \_\_\_\_\_ (“Subcontractor”).

Contractor and Subcontractor hereby agree that the following terms and conditions shall constitute the terms and conditions for all work (the “work”) commenced by Subcontractor on behalf of Contractor (whether pursuant to a written purchase order or oral agreement) during the two (2) year period commencing on the date of this agreement. These terms and conditions shall continue in full force and effect in the event the work proceeds past this two (2) year period.

### **ARTICLE I** **SCOPE OF WORK**

**1.01** The Subcontractor is bound, responsible, obligated and liable to the Contractor as the Contractor is bound, responsible, obligated and liable to the project owner (“Owner”) under the contract by and between the Owner and Contractor (the “Prime Contract”). The term “Contract Documents” shall mean and refer to the purchase order issued by Contractor to Subcontractor, this Subcontract Agreement, the drawings and specifications issued by the Owner or its architect (the “Architect”), the Prime Contract, and Change Orders (as defined in this Subcontract). The term “Subcontract” as used herein shall mean the purchase order issued by Contractor and this Subcontract Agreement and any revisions thereto. In case of conflict between the Prime Contract and the Subcontract, the Subcontract shall govern the relationship between the Contractor and the Subcontractor. All work performed by Subcontractor shall be done under the direction of the Contractor, and to the satisfaction of the Contractor, Owner and Architect. The work to be performed by the Subcontractor includes that work specifically set forth in this Subcontract, as well as any and all other work incidental or related thereto, including but not limited to that work reasonably necessary for a complete and proper Project, or which is necessary to have a properly working and totally acceptable system and Project. It being the express intent that all work usually performed by the trades covered by the Subcontract and required by the Prime Contract shall be performed by this Subcontractor in addition to the work specifically set forth herein.

**1.02** Subcontractor represents that (i) it has fully acquainted itself with the scope of the work as reflected in the Contract Documents, and (ii) it has visited and inspected the Project Site and examined all existing conditions, including the location of adjacent structures and utilities, and access to the Project Site and is fully familiar with the general conditions of the Project.

**1.03** Subcontractor warrants and represents that all materials and equipment incorporated in the work shall be new and that the work shall be of good quality, free from improper workmanship and defective materials, and in strict conformance with the Contract Documents, and all applicable laws, rules, requirements, building codes and regulations of any governmental authorities having jurisdiction over the work. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

**1.04** Subcontractor hereby guarantees all of its work for a period of one (1) year after Final Completion of the Project, or such longer period of time as may be prescribed by law or by the terms of any special warranty required by the Contract Documents. Subcontractor shall obtain all manufacturer's warranties and guarantees and deliver same to Contractor as a condition to Final Payment.

**1.05** Pursuant to a schedule set by Contractor or prepared by Subcontractor and approved by Contractor, Subcontractor shall prepare all shop drawings, samples, catalog cuts and details required as determined by Contractor in connection with the work. No approval by Contractor, Owner, Architect or any other design professional or consultant retained by Owner or Contractor of any submittal, including a shop drawing, shall relieve Subcontractor from complying with the drawings and specifications. Any approval by Owner, Architect or other design professional or consultant is an approval of the submittal as being in general conformance with the drawings and specifications. Any deviation in a submittal from the drawings and specifications is the responsibility of Subcontractor notwithstanding an approval of the submittal by the Contractor, Owner, Architect, and or other design professional or consultant.

## **ARTICLE II**

### **MUTUALITY OF DOCUMENTS**

**2.01** The Subcontractor hereby acknowledges that it has carefully reviewed and examined the Subcontract and all of the Contract Documents and all other documents directly or indirectly relating to this Subcontract. The Subcontractor acknowledges that it has fully examined and analyzed all conditions that could affect its performance and that no conditions exist which would affect the progress, performance or Contract Sum (as defined below). The Subcontractor shall be required to do all things and be bound by all rulings of the Owner or Architect to the same extent and degree as the Contractor is bound thereto.

**2.02** The Subcontractor, before proceeding with any work under the Subcontract will accurately check and verify all previous and surrounding work done by others and determine the correctness of same. The Subcontractor shall field measure all work relating to its work. The failure of the Subcontractor to detect and disclose any existing discrepancies or nonconformities and report same to the Contractor in writing, before commencing its work shall relieve the Contractor of any and all responsibility for same, and the Subcontractor shall be responsible and liable for all resulting damages, costs and expenses arising as a result of discrepancies and nonconformities which should have been discovered by the Subcontractor.

**2.03** All work, labor, services and materials to be furnished, supplied or performed by the Subcontractor must strictly comply with all Federal, State, Local, Municipal, as well as any and all other governing jurisdictions' and authorities' Laws, Rules, Regulations, Statutes, Ordinances, and Directives (hereinafter designated as "Laws"). If the Subcontractor discovers or should have discovered any variance between the Subcontract and any of the governing Laws or legislation, the Subcontractor shall be responsible to promptly notify the Contractor, in writing, and to make the necessary changes before proceeding with its work. The Subcontractor agrees to indemnify and save the Contractor, Owner, and Architect harmless from and against any and all claims, loss or expense caused or occasioned directly or indirectly by its failure to fully comply herewith. Subcontractor shall comply with all safety and health laws. The Subcontractor shall report within one (1) day to the Contractor any injury to any of the Subcontractor's employees at the site.

## **ARTICLE III**

## TIME OF COMMENCEMENT AND COMPLETION

**3.01** The “Date of Substantial Completion” or the “Substantial Completion Date” for the work shall mean the date upon which the work has been substantially completed in accordance with the Contract Documents. If the Contract Documents do not define the Substantial Completion Date, then such date shall be the date when all of the work is completed, except for minor adjustments or minor deficiencies, so that the Owner is able to utilize the work for the purpose intended by the Contract Documents. Subcontractor shall perform its work pursuant to any schedule issued by Contractor. Contractor may require Subcontractor to provide a schedule for its work which schedule may be accepted or rejected by Contractor in its sole and absolute discretion.

**3.02** The “Date of Final Completion” or “Final Completion Date” shall mean the date upon which (a) all of the work (including all items set forth on the Punch List) has been fully and satisfactorily completed in strict conformance with the Contract Documents and in full compliance with all applicable laws, rules, requirements and regulations of all governmental authorities having jurisdiction over the work unless otherwise directed by the Contract Documents, (b) all final certificates of approval relating to the work shall have been issued and delivered to the Contractor, (c) all required receipts, releases of liens, affidavits, waivers, operation and maintenance manuals, guarantees, warranties, bonds, as-built drawings and any other documents required under this Subcontract to be delivered to the Contractor by the Subcontractor shall have been issued and delivered to Contractor, and (d) Subcontractor has provided Owner and/or its designee(s) commissioning, and hands-on training (for as much time as reasonably requested by Owner’s or its designee’s personnel) on the operation and maintenance of all building equipment and systems (training to be performed by factory personnel or certified technical trainer for the equipment and systems installed) which shall be performed based upon a schedule mutually agreeable to Owner, General Contractor and Subcontractor.

## **ARTICLE IV** **SUB-SUBCONTRACTORS**

**4.01** The term “Sub-Subcontractor” shall mean a person (other than employees) or organization who has a direct contract with the Subcontractor or any person or organization directly or indirectly in privity with Subcontractor (including every sub-subcontractor of whatsoever tier) to perform any portion of the work for the Project whether for the furnishing of labor, materials, equipment, services or otherwise. Prior to entering into any agreement with a Sub-Subcontractor, Subcontractor shall submit in writing to Contractor the name and address of each Sub-Subcontractor, and a description of the portion of the work and type of activity to be performed by the Sub-Subcontractor. Contractor shall have ten (10) days from the receipt of said notice to disapprove of the proposed Sub-Subcontractor for any reason whatsoever and Subcontractor shall not be entitled to any change in the Contract Sum or time to complete the work on account of any such disapproval.

**4.02** Subcontractor shall not subcontract the performance of all or any of its obligations hereunder without the prior written consent of Contractor, which consent may be given or withheld in Contractor’s sole and exclusive discretion.

**4.03** Subcontractor shall bind all of its Sub-Subcontractors to all of the terms, provisions, conditions and covenants of this Subcontract and the Contract Documents. Contractor’s consent to any Sub-Subcontractor shall not be deemed to create a contractual relationship between Contractor and any Sub-Subcontractor. In addition, under no circumstances is any Sub-Subcontractor a third party beneficiary of the terms of this Subcontract.

**ARTICLE V**  
**ASSIGNMENT**

**5.01** Subcontractor shall not assign this Subcontract or the performance of all or any of its obligations hereunder without the prior written consent of Contractor, which consent may be given or withheld in Contractor's sole and exclusive discretion.

**ARTICLE VI**  
**LIENS AND CLAIMS**

**6.01** If, at any time, any lien or claim of any kind whatsoever is filed against the Project by a Sub-Subcontractor or anyone claiming under or through Subcontractor or a Sub-Subcontractor for work, labor or services performed or materials, supplies or equipment furnished in connection with the work, Subcontractor shall, within two (2) days after notice from Contractor, cause or commence proceedings for such lien or encumbrance to be canceled and discharged of record by payment, bonding or otherwise, at Subcontractor's sole cost and expense, and at no cost to Contractor. Subcontractor shall cause such lien or claim to be discharged as of record within ten (10) days from the date it learns of the lien or claim.

**6.02** If any lien required to be removed at Subcontractor's sole cost and expense pursuant to Section 6.01 hereof is not canceled and discharged of record as aforesaid, Contractor shall have the right to take such action as Contractor shall deem appropriate (which shall include the right to cause such lien to be canceled and discharged of record and/or terminate the Subcontract for cause), and in such event, all costs and expenses incurred by Contractor in connection therewith (including, without limitation, premiums for any bond furnished in connection therewith, and reasonable attorneys' fees and disbursements), shall be paid by Subcontractor to Contractor on demand; or, at the option of Contractor, deducted from any payment then due or thereafter becoming due from Contractor to Subcontractor in accordance with the provisions of this Subcontract. In addition, in the event any collateral is required by a surety company issuing a mechanic's lien discharge bond, or cash is deposited into court or the County Clerk to discharge a mechanic's lien, the amount of the collateral or amount paid into court or to the County Clerk shall be deducted from any payments due Subcontractor.

**ARTICLE VII**  
**DELAY**

**7.01** Time is of the essence in the performance of the Subcontract. Subcontractor shall take all necessary actions required to remedy any delay due to its own fault, including, without limitation, providing additional forces to perform the work or working overtime. Any costs or damages including, but not limited to, attorneys' fees, incurred by Contractor as a result of Subcontractor's delay in prosecuting its work or completing its work shall be borne by Subcontractor.

**7.02** If Subcontractor is delayed at any time by (i) the negligent and/or willful acts or omissions of Contractor, Owner and/or Owner's agents in the performance of its respective obligations for the Project with knowledge that such acts or omissions would result in delays and/or hindrances, (ii) economic, industry-wide strikes, (iii) fire, (iv) acts of God, (v) acts of the public enemy, (vi) unavailability of, or inability to obtain, labor or materials by reason of acts of any governmental body which affect the supply or availability of labor or materials, (vii) floods, (viii) rebellions, riots, insurrections or sabotage, (ix) extreme and unusual adverse weather conditions, (x) suspension, re-sequencing, stoppage or interruption of the work ordered by Contractor under this Subcontract, (xi) unavoidable casualties or the causes beyond Subcontractor's control, and (xii)

changes ordered in the work (hereinafter collectively referred to as “Contemplated Delay”), Subcontractor shall only be entitled to extensions in contract time, and such Contemplated Delay shall not give rise to any claim for monetary damages or any extra compensation in the form of an increase in the Contract Sum, and Subcontractor agrees not to make any such claim. Notwithstanding the foregoing, Subcontractor shall be entitled to an extension of time only to the extent same is granted to Contractor by Owner and/or Architect.

**7.03** Notwithstanding the provisions set forth in section 7.02 above, Subcontractor shall not be entitled to an extension of the time to perform the work unless the Subcontractor is without fault, has diligently sought to minimize the period of delay or hindrance by means which include, without limitation, seeking alternate sources of labor or materials or acceleration of the work, and shall have given written notice to Contractor of such claim within five (5) days after the occurrence of any Contemplated Delay. **THE AFORESAID FIVE (5) DAY NOTICE IS A CONDITION PRECEDENT TO AN EXTENSION OF THE TIME TO PERFORM THE work.** The failure by Subcontractor to provide any five (5) day notice shall constitute a waiver by Subcontractor of an extension of time to perform the work based on the Contemplate Delay. Subcontractor shall require in all subcontracts that the sub-subcontractor provide the aforesaid five (5) day notice. Failure to do so shall constitute a waiver by the sub-subcontractor of an extension of such time based on the Contemplated Delay. **Contractor shall make no claim for an increase in the Contract Sum on account of any delays in the performance of the work, and its sole remedy for delay shall be an extension of time if Contractor is entitled to same in accordance with the provisions of this Subcontract.** Any extension of time shall be deemed accepted by Contractor only if reflected in a validly issued Change Order. Subcontractor shall incorporate the foregoing provision in all of its subcontracts.

## **ARTICLE VIII**

### **PAYMENTS TO SUBCONTRACTOR**

The “Contract Sum” means and refers to the amount of money to be paid to the Subcontractor as set forth on the purchase order for the performance of all of the work set forth in the purchase order, and shall be paid in accordance with the following procedures which may be amended at the request of the Owner:

**8.01** Based upon Applications for Payment submitted to the Contractor by Subcontractor, the Contractor shall make progress payment on account of the Contract Sum to Subcontractor as provided in the Contract Documents. Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Each Application for Payment shall be based upon the schedule of values submitted by the Subcontractor to Contractor and approved by Contractor prior to the performance of the Work. The schedule of values shall not be changed without the prior written approval of Contractor. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Architect and/or Owner may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor’s Applications for Payment. The Contract Amount shall be payable as hereinafter set forth, subject however to a holdback (“Retainage”) of 10% until the Substantial Completion Date as defined in this Subcontract. The Contract Sum includes all Federal, State, City, County, municipal, sales, use and other taxes imposed by law. Where the law requires any such taxes to be stated and charged separately, the total price of all items included in the work plus the amount of the taxes shall not exceed the Contract Sum.

On or about the 15th day prior to the end of each calendar month during the performance of the Work, Subcontractor and Contractor shall meet at the Project Site for the purpose of reviewing Subcontractor's performance and submission by Subcontractor to Contractor and if requested by the Contractor, to the Owner, for their approval a request for payment (“Requisition”) for work performed and to

be performed through the end of that calendar month. Each Requisition (on a form approved by Contractor) shall be submitted by Subcontractor to Contractor on or before the 20th day of each month during the performance of the Work, and shall set forth the proportion of the Contract Sum properly allocable to labor, materials and equipment actually incorporated in the Work, less the aggregate of previous amounts requisitioned by Subcontractor.

**8.02 (a)** With each Requisition, Subcontractor shall submit partial waivers of lien, in a form annexed hereto as **Exhibit "A"**, acknowledging that it has been paid in full for all labor performed and materials furnished to the Project as of the date of the prior Requisition, and that Subcontractor has no claims including, but not limited to, those for extra work or additional costs for work performed up to the date of the Requisition except for the amount requested in the Requisition and any other claims identified in the partial waiver of lien submitted with the Requisition. In addition, Subcontractor shall with each Requisition furnish an affidavit, in a form approved by Contractor, verifying that all labor and materials furnished by Subcontractor for the work, including all applicable taxes, union dues and union fringe benefits, as may be applicable, have been paid by it up to its last preceding Requisition and such other supporting documentation as may be requested by Contractor. Subcontractor shall also provide if requested by Contractor, certified payrolls setting forth the names of all laborers performing the work, the dates and hours worked, the wages and fringe benefits paid, on forms as provided or approved by Contractor. Proof of payment of all Sub-Subcontractors and laborers shall be provided if requested by Contractor. Contractor may contact any Sub-Subcontractor to verify that the Sub-Subcontractor has received all payments that are acknowledged in any waiver of lien. Should Subcontractor pay laborers in cash, Subcontractor shall provide signed and notarized receipts from each laborer certifying that he/she has been paid in full for wages and fringe benefits for the preceding week. The foregoing requirements are all conditions precedent to payment.

**(b)** Contractor expects to receive its payment for its requisitions (which include subcontractors' requisitions) within thirty (30) days following the submission of the Contractor's requisition to Owner. Contractor shall pay over to Subcontractor the amount approved and paid by Contractor, Owner and Architect, less Retainage, with respect to the work within ten (10) days after Contractor's receipt of payment from Owner.

**8.03** Within thirty (30) days following the Date of Substantial Completion and submission of a Requisition therefore by Subcontractor (and subject to Contractor's determination of the amount payable to Subcontractor), Contractor shall pay to Subcontractor an amount equal to the balance remaining unpaid to Subcontractor on account of the Contract Sum after deducting there from a sum equal to at least two hundred percent (200%) of the amount necessary to complete Punch List items and replace defective work (the "Punch List Amount" as determined by Owner, Architect and/or Owner's agents), unless a greater amount is withheld by Owner pursuant to the Prime Contract.

**8.04** Final Payment constituting the entire unpaid balance of the Contract Sum shall be paid by Contractor to Subcontractor within thirty (30) days after the Date of Final Completion provided all of the work has been completed in accordance with this Subcontract and all of the Contract Documents to Contractor's complete satisfaction. In addition, the following are conditions precedent to receipt of Final Payment by Subcontractor: (a) submission of Final Waivers Of Lien And Release (in the form annexed hereto as **Exhibit "B"**) executed and furnished by Subcontractor and its Sub-Subcontractors and suppliers waiving their respective rights to file any mechanic's lien against the Project, releasing Contractor and Owner from all claims in connection with the performance of the work and indemnifying Contractor and Owner from any and all claims related to the Project, and (b) Subcontractor shall have delivered to Contractor such other certificates, as-built drawings, operating and maintenance manuals, warranties, permits, sign-offs, documents or instruments required by the Contract Documents, and provided Owner and/or its designee(s) commissioning, and hands-on training (for as much time as reasonably requested by Owner's or its designee's personnel) on the operation and maintenance of all building equipment and systems (training to be performed by factory personnel or certified technical trainer

for the equipment and systems installed) which shall be performed based upon a schedule mutually agreeable to Owner, General Contractor and Subcontractor.

**8.05** Subcontractor's acceptance of the Final Payment shall operate as a complete unconditional and general release of Contractor by Subcontractor (and all persons claiming by, through, and/or under Subcontractor) and waiver of all those claims with respect to any and all loss, liability, obligation, damage, delay, penalty, judgment, cost, claim, charge, tax, and/or expense of every kind whatsoever, known or unknown, foreseen or unforeseen and direct or consequential of which Subcontractor had knowledge.

**8.06** No payment, including Final Payment, shall constitute the acceptance of this Subcontract or the work by the Contractor, either in whole or in part, and no payment shall be construed as an acceptance of defective or incomplete work, and the Subcontractor shall remain responsible and liable for its performance being in strict compliance with this Subcontract and the Prime Contract. The Subcontractor hereby waives and releases any and all claims, causes of actions, and rights to payment, including final payment, except to the extent Contractor receives payment, funds or extensions of time from the Owner, and expressly acknowledges that payment from the Owner to the Contractor is a condition precedent to payment to the Subcontractor.

**8.07** In the event a Sub-Subcontractor has made a claim or has otherwise alleged that it has not been paid for labor, equipment or materials for which it should have been paid, or if Contractor has a good faith reason to believe that a Sub-Subcontractor has not been paid for labor, equipment or materials for which it should have been paid, Contractor may withhold an amount of money due or to be paid to Subcontractor that protect Contractor and Owner from any losses, claims or expense until such time as Contractor receives satisfactory evidence which, in its sole and absolute opinion, demonstrates that the claim has been resolved.

## **ARTICLE IX EVENTS OF DEFAULT AND TERMINATION OR SUSPENSION OF SUBCONTRACT**

**9.01 (a)** If, at any time during the performance of the work, Subcontractor (i) abandons the work, (ii) refuses to proceed with the work when and as directed by Contractor, (iii) persistently disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction over the work, (iv) in the sole and exclusive opinion of Contractor cannot complete the work on or before the Date of Substantial Completion, (v) fails to discharge a mechanic's lien filed against the Project by any Sub-Subcontractor, supplier or on behalf of persons who performed labor at the Project within ten (10) days after written notice from Contractor, (vi) becomes a party to any bankruptcy, insolvency or similar proceeding in a capacity as a debtor, or seeks any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Federal or State statute, law or regulation, (vii) fails to make any payment due to a Sub-Subcontractor, laborer, union, or due pursuant to a collective bargaining agreement, (viii) fails to provide and/or maintain the insurance required herein, or (ix) is in default in observing and performing any other of its obligations under this Subcontract, Contractor upon two (2) days' written notice may terminate this Subcontract on a date specified by Contractor in said notice and/or withhold sufficient funds from and/or due Contractor in order to protect Contractor's interests, unless Subcontractor cures or corrects the deficiency, breach or defect set forth in said notice within the aforementioned two (2) days.

**(b)** In addition, Contractor may also and/or in lieu of the foregoing, upon two (2) days' written notice, retain other contractors to perform those portions of the work which in Contractor's sole and exclusive opinion, need to be performed in order to achieve the Substantial and/or Final Completion Date. Any sums incurred by Contractor shall be back charged to Subcontractor.

**9.02** Upon the occurrence of an Event of Default and termination of this Subcontract, Contractor shall have the right, in addition to all other rights and remedies, to complete or cause the work to be completed, by such means, and in such manner, by contract or otherwise, as Contractor deems advisable. Contractor may deduct any costs, expenses and losses it incurs in connection therewith from any payment then due or thereafter becoming due to Subcontractor without prejudice to any other remedies Contractor may have. If this Subcontract is terminated by Contractor for cause, Subcontractor shall not be entitled to any further payments with respect to work performed at the Project or pursuant to this Subcontract. If the amount paid (or to be paid) to complete the work plus the direct and consequential costs and damages incurred by Contractor due to Subcontractor's default is more than the balance left under the Subcontract at the time of the termination of this Subcontract, Subcontractor shall pay over the difference to Contractor within five (5) days after demand by Contractor. In the event of a breach of this Subcontract by Subcontractor, and in addition to any other damages or costs for which Subcontractor shall be liable, Subcontractor shall be liable for reasonable attorneys' fees incurred by Contractor due to the breach of the Subcontract.

**9.03** If it shall be determined that a termination under Section 9.02 was wrongful or unjustified, such termination shall be deemed to be a termination for the convenience of Contractor under Section 9.04 hereof, and the sole right, remedy and recourse of Subcontractor against Contractor shall be governed and determined by said Section 9.04.

**9.04** Contractor, at any time, and for any reason whatsoever in Contractor's sole discretion, may terminate this Subcontract for its own convenience by delivering to Subcontractor a notice of termination specifying (i) the date upon which such termination shall become effective, and (ii) any specific portion of the work to be completed by Subcontractor prior to such termination. Upon receipt of any such notice of termination, Subcontractor shall, at Contractor's option, assign to Contractor, all of the right, title and interest of Subcontractor under any or all Subcontracts entered into by Subcontractor in connection with the work. Subcontractor shall include in each and every Sub-Subcontract a provision specifically contemplating and validating any such assignment and the Sub-Subcontractor's agreement to continue to perform its services under the Subcontract without interruption.

**9.05** In the event of a termination of this Subcontract pursuant to Section 9.04, Subcontractor shall be paid by Contractor for (i) the fair and reasonable value of the work performed from and after the date of the last approved Requisition up to the date of such termination by Subcontractor less (ii) any sums properly deductible by Contractor under the terms of this Subcontract. Notwithstanding the termination for convenience, Subcontractor is still responsible for the work installed to be compliant with the Contract Documents. In the event of a termination pursuant to section 9.04, Subcontractor shall not be entitled to lost profits on the unperformed work or any other direct or consequential damages.

**9.06** Contractor may, at any time or from time to time and for any reason, direct Subcontractor to suspend, stop or interrupt the work or any portion thereof for a period of time. Such direction shall be in writing and shall specify the period during which the work is to be stopped. Subcontractor shall resume the work upon the later of the date specified in such direction or within 14 days of such notice. Subcontractor understands and agrees that it shall not be entitled to, nor will it make any claim for, any increase in the Contract Sum as a result of suspension, stoppage or interruption, and, in accordance with Article VII, is only entitled to an extension of time to complete the work.



**ARTICLE X**  
**MATERIALS AND EQUIPMENT**

**10.01** As the work progresses, title to each item of material or equipment shall vest in Contractor upon the earlier to occur of (a) incorporation of such item into the work, or (b) payment for such item by Contractor. Each such item shall then become the sole property of Contractor, subject to the right of Contractor or Architect to reject the same at any time prior to the Date of Final Completion for failure to conform to Contractor's standards or the Contract Documents. Subcontractor shall be responsible for insuring materials and equipment until the same are delivered to the Project Site and incorporated in the Project. Subcontractor is responsible for the protection of its own tools and equipment, and shall make no claim against Contractor or Owner for damages or loss to its tools and equipment for any reason.

**ARTICLE XI**  
**CHANGES IN THE WORK**

**11.01** Contractor, without invalidating or abandoning this Subcontract, may at any time require changes in the work consisting of additions, deletions or other revisions. For Owner or Contractor requested changes, the Subcontractor shall not be entitled to nor shall it receive any increase or upward adjustment in its Contract Sum unless said amount and liability are acknowledged, in writing, by Contractor's authorized representative, which representative must have written authority for such acts, otherwise the Subcontractor shall proceed at its own risk and expense. No alteration, addition, omission or changes shall be made in the work, or the method or manner of performance of same, except upon the written, signed Change Order sent by the Subcontractor to the Contractor. Any change or adjustment in the Contract Sum by virtue of such Change Order shall be specifically stated in said Change Order. Change Orders are subject to the terms of these Articles and all other Contract Documents. Prior to the execution of any Change Order, the Contractor may require the Subcontractor to furnish to the Contractor a detailed breakdown showing the difference in value of the work, labor, services and materials altered, added, omitted or changed by the proposed Change Order. If an agreement as to monetary allowance or other terms in the Change Order cannot be reached, the Contractor, by an authorized representative, may direct, in writing, the Subcontractor to perform the work, with the final adjustment reserved until final completion of both this Subcontract and the Prime Contract. The monetary amount for the performance of any Change Order shall not exceed the allowance set forth in the Subcontractor's prior price breakdown. The failure of the Subcontractor to immediately commence performance of any Change Order, when so directed in executed written form by the Contractor, whether or not all terms have been agreed upon, may be deemed a material breach and the Subcontractor may be held in default of this Subcontract. However, for Owner driven changes, Subcontractor shall be entitled to interim payments for such change order work to the extent Contractor can obtain interim payments for such change order work from Owner. If such interim payments are made, they shall be credited to the final amount agreed upon by the parties or by a court of law. Any extension of time needed as a result of a proposed Change Order shall be requested by the Subcontractor in the Change Order. There shall be no other monetary or time allowance, direct or indirect, to the Subcontractor other than what is specifically written in the Change Order, including but not limited to, delays, suspensions, escalations, impact or other cost factors. Ordinary field modifications which do not substantially increase Subcontractor's cost of this Subcontract will be performed without any price adjustment.

**11.02** If the Owner or Contractor elects to direct the Change Order work to be performed by the Subcontractor on a time and material basis, Subcontractor shall prepare daily time and material sheets which shall be submitted to the Contractor's site representative for said representative's signature. Subcontractor will not be entitled to payment for any time and material expended for which there is no daily time and material sheets bearing Contractor's site representative's signature. Subcontractor agrees and acknowledges that the daily time and material sheets do not constitute the Change Order; rather, they are to be used solely as a record to verify the amount of labor and material expended by Subcontractor on that particular day. Subcontractor

shall, with each Requisition, deliver to Contractor invoices for the Change Order work which shall include only direct out-of-pocket material and labor costs with a maximum mark-up of five percent (5%). Subcontractor, if requested by Contractor, shall issue an executed Change Order to Contractor based on the invoices, which shall be executed by Contractor and returned to Subcontractor. The five percent (5%) maximum mark-up on time and material invoices is deemed to be full and complete compensation to the Subcontractor for all general and administrative expenses, overhead, supervision and profit.

**11.03** The issuance of any Change Order and payment thereof, prior to completion and acceptance of the Project, shall not preclude the Contractor from questioning whether the work performed pursuant to the Change Order and recouping payment therefore, where, on the final settlement, it appears that the Change Order work was neither extra nor additional work under a proper interpretation of this Subcontract or the Contract Documents. No Change Order shall vary, abrogate, avoid or otherwise affect the terms, conditions and provisions of this Subcontract except as specifically set forth in the Change Order.

**11.04** Notwithstanding anything in this Subcontract to the contrary, for Owner requested or driven changes, the Subcontractor shall in no event be entitled to, nor shall it receive any compensation or allowance for any Change Order in an amount greater than that which is approved by the Owner and which the Contractor actually receives from the Owner, less a reasonable deduction for work performed by the Contractor, as well as for the Contractor's overhead and profit.

**11.07** With respect to acts, omissions, directives, rulings or decisions made by Owner or Architect, Subcontractor shall be bound by such acts, omissions, directives, rulings or decisions to the same extent that Contractor is bound by the acts, omissions, directives, rulings or decisions.

**11.08** In the event of changes in the work which reduce the scope of the work hereunder, the Contract Sum shall be reduced by an appropriate amount which shall not in any event be smaller than the cost of the work plus an allowance for Subcontractor's overhead and profit.

## **ARTICLE XII** **SUBSTITUTIONS**

**12.01** The products, materials and equipment of manufacturers referred to in the Contract Documents are intended to establish the standard of quality and design required by Architect. Anything contained in the Contract Documents to the contrary notwithstanding, materials or manufacturers other than those specified may be used only if approved and accepted by Contractor in writing prior to the use of the materials. In no event shall the Date of Substantial Completion or the Date of Final Completion be extended, nor shall the Contract Sum be increased, by any circumstance resulting from a proposed substitution, nor shall Subcontractor be entitled to any compensation related thereto, without the issuance of a Change Order approved by Contractor in accordance with Article 11 hereof.

## **ARTICLE XIII** **CLAIMS**

**13.01** Contractor and Subcontractor hereby agree that the Contractor may, in its sole and absolute discretion, upon the written request of the Subcontractor, appeal on behalf of the Subcontractor from any act, directive, omission, ruling or decision of the Owner or Architect, or institute any action or proceeding to recover

damages for any affirmative claim by the Subcontractor caused by reason of any act or omission by the Owner relating to the work or performance of the Subcontractor. In that event, the Subcontractor shall pay all costs attributable thereto and shall render all assistance requested by Contractor. The Subcontractor shall be bound by the determination of the Owner or the Architect, or in the event of an appeal or further action or proceeding, by the determination of same, and shall be entitled only to its proportionate share of any actual net recovery, less overhead and profit to the Contractor and less the Contractor's expenses and attorneys' fees in handling said matter. With respect to claims caused by reason of any acts, omissions, directives, rulings or decisions by Owner or Architect, the Contractor hereby admits liability to the Subcontractor, and Subcontractor hereby liquidates its claim and waives and releases any and all claims, causes of actions, and rights to further payment beyond the Subcontract amount against the Contractor, except as the Contractor may receive funds or extensions of time from the Owner or Architect for each such claim prosecuted by Contractor on behalf of Subcontractor. The Subcontractor shall post whatever security may be required by the Contractor to cover the Contractor's cost and expenses, including attorneys' fees, prior to and as a condition to the Contractor's proceeding on the Subcontractor's behalf. The foregoing does not pertain to Owner or Contractor requested change order work as set forth in sections 11.01 and 11.02 above.

**13.02** In addition to any other notice requirements set forth in this Subcontract, the Subcontractor shall make no claim for changes in the work, additional work or extra work due to acts or omissions of Owner, Contractor and/or Architect unless notice of such claim is made in writing to the Contractor within three (3) business days after the event giving rise to such claim and prior to the performance of any such additional work. In the event such written notice is not given such claim shall be considered as abandoned and waived by the Subcontractor. **THE AFORESAID WRITTEN NOTICE OF ANY CLAIM BY SUBCONTRACTOR FOR AN INCREASE IN THE CONTRACT SUM OR FOR AN EXTENSION OF TIME TO COMPLETE THE WORK IS A CONDITION PRECEDENT TO AN INCREASE IN THE CONTRACT SUM OR FOR AN EXTENSION OF TIME TO COMPLETE THE WORK.** The foregoing does not pertain to Owner or Contractor requested change order work as set forth in sections 11.01 and 11.02 above.

**13.03** Bills for any changes in the work, additional work or extra work shall be rendered at such time and in such form as directed by the Contractor. For the purpose of verifying such bills, the Subcontractor shall upon request produce any and all data to determine the correctness of the charges.

**13.04** When the Subcontractor is performing a change(s) in the work which the Subcontractor believes is extra work caused by an act or omission of Owner or Contractor, the Subcontractor shall, in addition to the notice required by section 13.02 above, furnish the Contractor with daily with a Time And Material Tickets signed by a site representative of the Contractor stating the following:

- (i) The names and numbers of workmen employed for such work, the number of hours employed and the nature of the work each workman is doing; and
- (ii) The nature and quality of any materials, equipment furnished or used in connection with the performance of such work and the name of the entity from whom materials and/or equipment were purchased or rented.

**13.05** Notwithstanding any language to the contrary, signed Time And Material Tickets only represent verification of work performed by the Subcontractor. Signed Time And Material Tickets are in each case subject to all Subcontract requirements which requirements shall determine whether work is extra work to the Subcontract, and do not constitute an agreement by the Contractor that the work set forth on the Time And Material Tickets is fair and reasonable.

**13.06** No claim against the Contractor for extra compensation or damages and/or an extension of time to complete the work shall be made or asserted in an action or proceeding at law or in equity unless the Subcontractor shall have complied with the requirements relating to the giving of notice and information with respect to such claims as provided in this Subcontract. The failure of the Subcontractor to fully comply with any such notice provisions in this Subcontract shall be deemed a waiver of only those claims for extra compensation and/or damages, and/or extensions of time to complete which are the subject of such failure.

**13.09** To the extent Subcontractor has not been paid sums (i) for work performed for which payment has not been received by General Contractor from Owner, (ii) for additional or extra work, or (iii) for other costs or damages, relating to the Subcontractor's performance of work for the Project, prior to commencing an action against General Contractor, Subcontractor must fully pursue its lien rights against the Project for which a claim of non-payment is made under the lien law of the State of New York, including a foreclosure action against same (the "Lien Action"). After the Lien Action is fully adjudicated, Subcontractor may then commence an action against General Contractor only to the extent that, and for the amount that, Subcontractor's ultimate recovery from the Owner, by virtue of the Lien Action, is less than the proper unpaid amount due this Subcontractor. Subcontractor hereby expressly waives any and all claims with respect to any unpaid sums against General Contractor under this Subcontract, unless and until the Lien Action is fully completed. This waiver shall in no way impair Subcontractor's rights to perfect and foreclose its lien against the Project under the lien law of the State of New York in the event that it does not receive payment hereunder, or preclude Subcontractor from exercising its rights under section 13.01 above.

#### **ARTICLE XIV** **INSPECTION AND TESTING**

**14.01** If the Contract Documents or any laws, rules, ordinances or regulations of any federal, state or local governmental authorities having jurisdiction over the work require that any work be inspected or tested, Subcontractor shall give Contractor and Architect timely notice of readiness of the work for inspection or testing and the date fixed for such inspection or testing.

**14.02** Whenever, in the opinion of Contractor, it is desirable to require previously unspecified inspection or testing of the work or its individual components, it shall have authority to do so whether or not such work is then fabricated, installed, covered or completed. All costs incurred in connection with such special inspection or testing shall be a reimbursed by the issuance of a Change Order unless it reveals a test failure as a result of the acts or omissions of Subcontractor or any Sub-Subcontractor, in which event, Subcontractor shall bear, at its sole cost and expense, all costs of such previously unspecified inspection or testing, including, without limitation, additional services rendered by Architect made necessary thereby. No inspection performed or failed to be performed by Contractor hereunder shall be deemed a waiver of any of Subcontractor's obligations hereunder or be construed as an approval or acceptance of the work or any part thereof.

#### **ARTICLE XV** **EQUAL OPPORTUNITY**

**15.01** The Subcontractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

**ARTICLE XVI**  
**LABOR RELATIONS**

**16.01** Subcontractor shall use only such labor at the Project as shall be compatible with all other labor employed in connection with the Project. No such labor employed by or on behalf of Subcontractor shall be the cause of any labor disturbance, strike, picketing, jurisdictional union dispute or work slowdown. In the event a picket line occurs as the result of the performance of work, Subcontractor shall implement and coordinate with General Contractor the procedures for a reserve gate.

**16.02** Contractor and Owner shall have the right to prohibit any person from entering the Project site if Contractor or Owner has a good faith belief that the person has failed or will fail to comply with safety requirements or standards; has consumed alcoholic beverages or a controlled substance; or his presence has or will in any way cause an unsafe condition at the Project site.

**ARTICLE XVII**  
**INDEMNIFICATION**

**17.01** To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Owner, Contractor, and their respective members, officers, directors, shareholders, agents, employees, successors, and assigns (collectively, "Indemnitees") from and against all losses, claims, costs, damages, and expenses (including, without limitation, the deductible amounts of any insurance and attorneys' fees, court costs, and the cost of appellate proceedings), arising out of or resulting from the performance of the work, or by Subcontractor's breach of this Subcontract. Notwithstanding anything to the contrary herein, Subcontractor is not responsible to indemnify the Indemnitees for damages caused by the sole negligence of any Indemnitee hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any Indemnitee.

**17.02** In any and all claims against any Indemnitee by any employee of Subcontractor, or of its Sub-Subcontractors or anyone directly or indirectly employed by either Subcontractor or its Sub-Subcontractors or anyone for whose acts either Subcontractor or its Sub-Subcontractors may be liable, the indemnification obligation under this Section 17.01 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' or workmen's compensation acts, disability acts or other employee benefit acts.

**ARTICLE XVIII**  
**INSURANCE**

**18.01 Minimum Coverages Required.** Prior to the commencement of any of the Work, the Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability, at its own expense, to be maintained until completion of the Work or its final acceptance, and for such longer period of time as specified herein.

**18.02 Automobile Liability.** This insurance shall be provided on a current ISO form or equivalent, applying on an "any auto" basis, including coverage for all vehicles used in connection with the Work, and providing limits of at least **\$1,000,000.00** per occurrence – bodily injury and property damage combined, including uninsured and underinsured motorist coverage and medical payment protection. Coverage shall include, without limitation, loading and unloading.

**18.03 Workers' Compensation.** Workers' compensation insurance providing statutory limits for the state(s) in which the Work will take place. The insurance shall include, but not be limited to, coverage or endorsements for Occupational Disease Benefits, Voluntary Compensation and Disability Benefits, Jones Act and U.S. Longshoremen's and Harbor Worker's Act, if applicable. Self-insurance is not acceptable.

**18.04 Employer's Liability.** This insurance shall have limits of at least **\$1,000,000.00** for each bodily injury by accident, each bodily injury by disease, and annual aggregate.

**18.05 Commercial General Liability.** This insurance shall be provided on a current ISO occurrence form including coverage for damages because of bodily injury, property damage, personal and advertising injury, and for the products-completed operations hazard. This insurance shall have annual limits of at least **\$1,000,000.00** combined single limit for bodily injury and property damage each occurrence; **\$2,000,000.00** general aggregate; and **\$2,000,000.00** products-completed operations aggregate. Limits shall be on a per project basis. This insurance shall be maintained from commencement of the Work until not less than 10 years after substantial completion and acceptance of the Project, or to the applicable Statute of Repose in the jurisdiction where the Project is located, whichever is shorter.

**18.06 Umbrella/Excess Liability.** This insurance shall be in the form of an umbrella or excess liability policy providing coverage excess to, and at least as broad as, the Commercial General Liability, Employer's Liability, and Automobile Liability insurance coverages detailed above, with limits of **\$5,000,000.00**. Coverage shall "drop down" for defense and indemnity in the event of exhaustion or insolvency of the underlying insurance.

**18.07 Contractor's Pollution Liability.** If the Work being performed involves abatement, removal, replacement, repair, enclosure, encapsulation, and/or disposal of any hazardous material or substance, Subcontractor shall provide pollution liability insurance coverage for bodily injury and property damage with limits of not less than **\$5,000,000.00** per occurrence or claim. Coverage must remain in force for both on-Site and off-Site exposures, and remain in place for a period of not less than 5 years after substantial completion and acceptance of the Project.

**18.08 Professional Liability.** If the Work being performed involves services which would be excluded "professional services" under Subcontractor's Commercial General Liability insurance, Subcontractor shall provide professional liability insurance coverage with limits of not less than **\$5,000,000.00** per claim and **\$5,000,000.00** in the aggregate. This insurance must be maintained for at least 10 years after substantial completion and acceptance of the Project, or to the applicable Statute of Repose in the jurisdiction where the Project is located, whichever is shorter.

**18.09 Insurer Requirements.** Each insurer providing insurance coverage as required in this Agreement shall be a licensed, admitted insurer authorized to issue such coverages in New York state, and shall have an A.M. Best rating of A- VIII or better. Contractor, in its sole discretion, shall have the right to reject any insurance company selected by Subcontractor.

**18.10 Additional Insureds.** All insurance required by this Agreement (excluding only Workers' Compensation and Professional Liability insurance) shall name the following parties as additional insureds: Owner, Contractor, each of their parents, members, affiliates, lenders, directors, officers, representatives, agents, and employees, all parties required to be indemnified by this Agreement, and all other parties as reasonably requested by Contractor (hereinafter, collectively the "Additional Insureds"). All policies (including primary, excess, and/or umbrella) shall state that the insurance provided to the Additional Insureds

is primary and non-contributory to any other insurance maintained by or available to the additional insureds. The insurance policies provided by Subcontractor pursuant to this Agreement shall not eliminate or restrict coverage for claims or suits between named insureds and additional insureds. The coverage provided to the Additional Insureds must be at least as broad as that provided to the first named insured on each policy. In the event that any policy provided in compliance with this Agreement states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the parties agree that nothing in this Agreement is intended to restrict or limit the breadth of such coverage. With respect to the Commercial General Liability insurance policy required under this Agreement, additional insured status must be provided on ISO forms CG 20 10 04 13 and CG 20 37 04 13, or their equivalent.

**18.11 Specific Restrictions on Commercial General Liability and Umbrella/Excess Insurance.** In addition to the specifications set forth above, the Commercial General Liability and Umbrella/Excess insurance policies Subcontractor provides pursuant to this Agreement shall comply with the following requirements:

- a. There shall be no modification to the ISO standard form definition of “insured contract”, and no modification to the ISO standard contractual liability exclusion;
- b. Coverage shall apply to bodily injury to employees of Subcontractor and to employees of any entity performing work on Subcontractor’s behalf, and there shall be no exclusion for claims made under New York State Labor Law sections 240 and 241, or other similar limitations or exclusions;
- c. There shall be no exclusions based on the nature of Subcontractor’s Work, including but not limited to residential exclusions for residential construction, height restriction exclusions, and PEX exclusions for plumbers using PEX tubing;
- d. There shall be no exclusion for the Additional Insureds’ vicarious liability, strict liability, or statutory liability, including, without limitation, liability pursuant to New York labor laws;
- e. There shall be no limitations or exclusions based on the existence or applicability of the Additional Insureds’ project-specific insurance;
- f. There shall be no professional liability exclusion broader than ISO form 22 79 07 98.

**18.12 Minimum Limits.** The limits of insurance provided by Subcontractor shall be the greater of the limits maintained in the normal course of Subcontractor’s business or the minimum limits specified in this Agreement. The limits of insurance stated above for each type of insurance are minimum limits only. In the event Subcontractor’s policy provides greater limits, then the Additional Insureds shall be entitled to, or to share in, the full limits of such policy, and this Agreement shall be deemed to require such full limits.

**18.13 Certificates of Insurance and Copies of Insurance Policies.** At least thirty (30) days prior to the commencement of the Work, Subcontractor shall furnish to Contractor a Certificate of Insurance (“COI”), in the form of ACORD Form 855 NY, indicating the Project and evidencing all coverages required under this Agreement and shall provide electronic copies of the actual Commercial General Liability and Umbrella/Excess Liability insurance policies, showing that Subcontractor has complied with the requirements set forth in this Agreement. Any renewals, changes in coverage, or replacements in coverage shall be similarly documents and forwarded at least ten (10) days prior to expiration. Policies will be reviewed for compliance with the requirements set forth in this Agreement by Contractor’s insurance coverage attorney. A Subcontractor’s failure to provide a COI and/or copies of its policies as set forth above shall not relieve it of its responsibility to carry and maintain the insurance required by this Agreement, and Contractor’s failure to demand or inspect a COI and/or copies of Subcontractor’s policies is not a waiver of any requirement contained in this Agreement.

**18.14 Waivers of Subrogation.** To the fullest extent permitted by law, all insurance Subcontractor furnishes in compliance with this Agreement shall include a waiver of subrogation in favor of the Additional Insureds.

**18.15 Waiver of Claims.** To the fullest extent permitted by law, Contractor and Subcontractor waive all rights against (1) each other and any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other; and (2) the Owner, the Architect, the Architect's consultants, and any of their subcontractors, subconsultants, agents and employees, for claims and damages to the extent covered by available builder's risk insurance.

**18.16 Notice of Cancellation.** All policies required under this Agreement shall contain endorsements that confirm that said insurance policies shall not be cancelled, not renewed, or materially changed except upon thirty (30) days prior written notice to Contractor.

**18.17 Deductibles & Self-Insured Retentions.** The policies Subcontractor furnishes in compliance with this Agreement shall not be subject to any deductible or self-insured retention in excess of **\$10,000.00** unless approved in writing by Contractor. Subcontractor shall be responsible for any deductible or self-insured retention due under any insurance it provides. The coverage afforded to the Additional Insureds shall not be conditioned on the payment of any deductible or retention.

**18.18 Site Safety.** Subcontractor acknowledges and represents that it has made an on-site inspection of the Project site and the work area so as to be familiar with all conditions which may affect the safety and health of its employees as well as those of its Subcontractors. Subcontractor and all of its employees shall follow all applicable safety and health laws and requirements pertaining to its work and the conduct thereof, but not limited to, compliance with all applicable laws, ordinances, rules, regulations, and orders issued by a public authority, whether federal, state or local, including OSHA and any safety measures required by Contractor. Contractor reserves the rights, but not the obligation, to inspect the safety work performance of Subcontractor to ascertain its compliance with these safety provisions. Notwithstanding the foregoing, Subcontractor, as an independent contractor, is solely responsible for controlling the manner and means by which it performs the Work pursuant to this Agreement. Unless otherwise agreed to by the parties in writing, Subcontractor shall provide all safety equipment, materials, tools and personal protection equipment necessary to perform the work in a safe, healthful, and workmanlike manner. Subcontractor shall immediately report to Contractor all accidents, occupational injuries, and illness involving its employees or those of its Subcontractors relating to the Work or which cause any injury to a third party or which cause damage to the property of Owner, Contractor, or a third party. Subcontractor shall promptly furnish to Contractor copies of any workers' compensation report of injury or illness forms filed by any of its employees or those of its Subcontractors and when requested assist Contractor in any investigation it may conduct of any such accident, injury, or illness.

**18.19 Contractor's Right to Procure Insurance.** In the event of a failure of Subcontractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, Contractor shall have the right (but not the obligation) to procure such insurance on behalf of Subcontractor, and Subcontractor shall furnish all necessary information in connection with Contractor's procurement and either pay the cost thereof to Contractor immediately upon presentation of a bill therefor, or have the cost thereof deducted from any payment otherwise due to Subcontractor under this Agreement at Contractor's option.

**18.20 No Waiver.** Any waiver or modification of the insurance requirements stated in this Agreement must be agreed to in writing by Contractor.

**18.21 No Limitation.** IN THE EVENT THAT THE LAW OF THE STATE IN WHICH THE PROJECT IS LOCATED (OR APPLICABLE LAW) LIMITS THE APPLICABILITY OF ANY OF THE INSURANCE COVERAGE THAT CONTRACTOR MAY REQUIRE FROM SUBCONTRACTOR, THEN



SUBCONTRACTOR SHALL BE REQUIRED TO OBTAIN COVERAGE TO THE FULLEST EXTENT OF COVERAGE AND LIMITS ALLOWED BY APPLICABLE LAW AND THIS AGREEMENT SHALL BE READ TO CONFORM TO SUCH LAW.

## **ARTICLE XIX**

### **ADDITIONAL PROVISIONS**

**19.01 Limitations of Actions.** No action or proceeding shall lie or be maintained by Subcontractor against Contractor, or any Indemnitees as defined in Section 17.01 & 17.02, upon any claim arising out of or based upon the Contract Documents, the work, or by reason of any act or omission, or any requirements relating to the giving of notices or information, unless such action or proceeding shall be commenced within one (1) year after Substantial Completion of the work or, if this Subcontract is terminated prior to the Substantial Completion Date, within one (1) year following the date of such termination. This provision shall not be deemed or construed to modify any other provision hereof relating to waivers of claims by Subcontractor or to extend any period herein specifically provided for the initiation of an action relating hereto.

**19.02 Independent Subcontractor.** It is expressly understood and agreed by the parties hereto that Subcontractor, in performing its obligations under this Subcontract, shall be deemed an independent Subcontractor and not an agent or employee of Contractor and nothing contained in this Subcontract shall be construed to mean that Subcontractor and Contractor are joint venturers or partners or to establish any contractual relationship between Contractor and any Sub-Subcontractors.

**19.03 Performance of work During the Pendency of Disputes.** Unless the parties hereto expressly agree otherwise in writing, in the event that a dispute shall arise under this Subcontract in connection with (i) payments to be made on any Requisition, (ii) any claim by Subcontractor that work directed by Contractor, Owner or Architect to be performed by Subcontractor is outside the scope of the work to be performed pursuant to this Subcontract, (iii) respect to whether Subcontractor is entitled to additional compensation for any extra or additional work performed by it, or (iii) respect to an extension of time requested by Subcontractor to perform the work, Subcontractor shall continue during the pendency of such dispute to perform the work and shall perform all other obligations required to be performed by it under this Subcontract as if no dispute shall have arisen. The existence of a dispute shall not limit the right of Contractor to proceed to remedy any default by Subcontractor.

**19.04 Hazardous Materials.** Subcontractor shall not knowingly cause or permit the Project or the Project site to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials and Hazardous Substances, except in compliance with all applicable Federal, State and local laws or regulations as required for completion of the Work. Subcontractor shall comply with and ensure compliance with all applicable Federal, State and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with any and all approvals, registrations or permits required thereunder. Subcontractor shall defend, indemnify, and hold harmless, as defined in section 21.06(a) hereof, Indemnitees from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to Subcontractor's failure to perform its obligations hereunder including, without limitation, attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this Section, "Hazardous" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, *et seq.*), the Superfund Amendments and Reauthorization Action of 1986

(Pub.L. No. 99-499, 100 stat. 1613 (1986), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, *et seq.*) and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, State or local environmental law, ordinance, rule, or regulation. The provisions of this section 21.07 shall be in addition to any and all other obligations and liabilities Subcontractor may have to the Contractor at common law, and shall survive Final Completion of the Work.

**19.05 Severability.** If any provision of the Contract Documents is invalid or unenforceable as against any person, party or under certain circumstances, the remainder of the Contract Documents and the applicability of such provision to other persons, parties or circumstances shall not be affected thereby. Each provision of the Contract Documents shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by law.

**19.06 Dispute Resolution, Governing Law and Consent to Jurisdiction.**

(a) All disputes arising hereunder, unless resolved by mutual agreement of the parties, shall be resolved by the Supreme Court of the State of New York located in the county where the work was performed.

(b) This Subcontract shall be governed by the laws of the State of New York, both as to interpretation and performance. Subcontractor hereby (i) irrevocably consents, for itself and its legal representatives, partners, successors and assigns, to the jurisdiction of the Courts of the State of New York for all purposes in connection with any action or proceeding which arises from or relates to this Subcontract; (ii) waives any right it may have to personal service of summons, complaint, or other process in connection therewith, and agrees that service may be made by registered or certified mail addressed to Subcontractor at its last known principal place of business; and (iii) waives its right to a trial by jury.

**19.07 Survival of Obligations.** Except as specifically provided for herein, all obligations of Subcontractor shall survive the completion or termination of the work and the termination of this Subcontract whether for cause or convenience.

**19.08 No Waiver.** The failure of either party to insist upon the strict performance of any provision of this Subcontract or the Contract Documents, or the failure of either party to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option, remedy or as waiver of a subsequent breach thereof. No action or failure to act by the Owner, Lender, Contractor or the Architect or any of Architect's consultants, shall constitute a waiver of any right or duty afforded any of them under the Contract Documents or this Subcontract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed to in writing.

**19.09 Communications.** All communications with Owner, Owner's representatives, Lender, Architect, and all other design professionals must go through Contractor. Any communication by Subcontractor with the foregoing shall be a material breach of this Subcontract. In the event Subcontractor is contacted by any of the foregoing, Subcontractor shall (i) refuse to communicate with the person, (ii) advise the person that it must communicate through Contractor, and (iii) immediately advise Contractor of the contact.

**19.10 Notices.** All notices hereunder shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, or sent by a nationally recognized overnight courier service, addressed as follows:

To the Contractor:      Talisen Construction Corporation  
213 West 35th Street  
New York, NY 10001  
Attn:    Joseph Rigazio

To the Subcontractor:

or to such other address as may be designated in writing by either party to the other in accordance with the provisions of this paragraph. All notices shall be deemed to have been given when received if by personal delivery or overnight delivery or, if by certified or registered mail, five (5) days after mailing, except that notice of change of address shall be deemed to have been given only when received.

**IN WITNESS WHEREOF**, the parties hereto have executed this Subcontract Agreement as of the day and year first above written.

**TALISEN CONSTRUCTION CORPORATION**

By: \_\_\_\_\_

Name: Joseph Rigazio  
Title: Principal & CEO

**[SUBCONTRACTOR]**

By: \_\_\_\_\_

Name:  
Title: