

SUBCONTRACTOR PURCHASE ORDER AGREEMENT

This Subcontract Agreement (“**Subcontract**”), effective as of the date set forth on the Subcontract Purchase Order (“**Effective Date**”), is entered into by and between **Alliance Engineers & Project Consultants, LLC**, (herein “**Alliance**” and/or “**Contractor**”) and Subcontractor (collectively, the “**Parties**”). The Parties understand, acknowledge, and agree that this Subcontract will establish the terms and conditions for certain Subcontract Work specifically identified herein to be performed by Subcontractor, which is a portion of the work to be performed by Contractor for Owner (and/or in certain instances, the Prime Contractor as defined herein) on the Project.

Article 1 Definitions

Unless otherwise agreed to between the Parties, the terms used herein will have the meanings set forth in this Article 1.

- 1.1. “**Contractor**” means the entity identified on the face of the Subcontract Purchase Order, which is entering into this Subcontract with Subcontractor, namely.
- 1.2. “**Day**” means calendar day, unless otherwise stated herein.
- 1.3. “**Laws**” means all currently effective applicable local, state, and federal laws, rules, regulations, ordinances, codes, statutes, permits, and other requirements of governmental authorities having jurisdiction over Subcontractor, the Project, the Project Site, the manner in which the Subcontract Work is performed, or the design, operation, or use of the Project, including, without limitation, any such requirements relating to payment of or working conditions for employees, non-discrimination, immigration, employment taxes, health or safety of employees and other persons, licensing, building codes, and environmental requirements.
- 1.4. “**Owner**” means the entity that owns or controls the Project Site and/or is undertaking the Project. In the event Contractor is not the Prime Contractor, the term Owner may also mean the Prime Contractor if the context so dictates.
- 1.5. “**Primary Contract**” and/or “**Prime Contract**” means all contract documents comprising the agreement between Prime Contractor and Owner for the Project, whether or not Contractor is also the Prime Contractor, and includes, but is not limited to, the Project plans, specifications and any standards and regulations referenced therein, drawings, terms and conditions, special provisions, supplementary conditions, schedules, exhibits, submittals, modifications, change orders, and addenda thereto.
- 1.6. “**Prime Contractor**” means, the entity with a contractual relationship with the Owner. *In certain instances, the Prime Contractor and the Contractor, as defined herein, may be the same entity, including projects where Alliance has a direct contractual relationship with the Owner.*
- 1.7. “**Project**” means the work that is the object of the Prime Contract.
- 1.8. “**Project Site**” means the location identified in the Prime Contract at which the improvements are located, as well as approved and designated storage and laydown areas.
- 1.9. “**Specifications**” means any requirements for performing the Subcontract Work, including, but not limited to, any plans, specifications, drawings, standards, means and methods, or testing procedures for performing the Subcontract Work, whether specified in writing and/or based upon usual and customary industry practice, whichever standard and/or specification is the higher standard.
- 1.10. “**Subcontract Amount**” means the total amount, in U.S. Dollars, specified in the Subcontract Purchase Order or Exhibit A to be paid by Contractor to Subcontractor for performance of the Subcontract Work, and includes all direct and indirect costs, applicable taxes and charges (including all state and federal unemployment and social security taxes, which will become due or payable arising out of the employment by Subcontractor of employees in the performance of the Subcontract Work), as well as all transportation costs, insurance fees, license fees, and any other expenses incurred by Subcontractor in performing the Subcontract Work), as well as all transportation costs, insurance costs, license fees, and all other, overhead, profit, surcharges and fees.
- 1.11. “**Subcontract Documents**” means, and consists solely of, the following (whether attached hereto or provided separately and concurrently herewith):
 - (a) the Subcontract Purchase Order, AllianceEPC Purchase Order Terms and Conditions, and all Change Orders issued under the Subcontract Purchase Order;
 - (b) this Subcontract;
 - (c) Exhibit A – Scope of Supply; including technical specifications

- (d) Exhibit B – RESERVED
- (e) Exhibit C – RESERVED
- (f) Exhibit D – RESERVED
- (g) Exhibit E – RESERVED
- (h) Exhibit F – RESERVED
- (i) Exhibit G – Prime Contract; and
- (j) Exhibit H – RESERVED

The Subcontract Documents are complementary and supplement each other, and any item exhibited in one part of the Subcontract Documents will be performed as if required in all parts of the Subcontract Documents. In the case of conflict, the order of precedence of the Subcontract Documents shall be as set forth above.

- 1.12. “**Subcontract Purchase Order**” means the document issued by Contractor that incorporates this Subcontract and is signed by both Parties, which signature is evidence of the Parties’ execution of this Subcontract, even if there is no signature on this Subcontract.
- 1.13. “**Subcontract Time**” means the total amount of time, *including authorized adjustments allowed by Contractor* to Subcontractor, for performance of the Subcontract Work. The Subcontract Time may be specified in the Subcontract Purchase Order, or may be depicted on the Project Schedule.
- 1.14. “**Subcontract Work**” means all labor, materials, tools, equipment, testing, inspection, scaffolding, safety appliances, hoists, lights, required licenses, supervision, engineering, and any other incidental items necessary for the proper and safe construction of the portion of the Project to be performed or provided by Subcontractor.
- 1.15. “**Subcontractor**” means the person or entity identified on the face of the Subcontract Purchase Order.

Article 2 Subcontractor Representations

- 2.1. Subcontractor is Qualified. Subcontractor represents that it is fully able, qualified, experienced, and licensed (if required) to perform the Subcontract Work.
- 2.2. Subcontractor Status. If this Subcontract is being awarded upon the basis that it qualifies under any Laws as: (i) a Women’s Business Enterprise, or (ii) a Disadvantaged Business Enterprise, or (iii) a minority, women owned, or economically disadvantaged firm as these terms may be defined from time to time under applicable law, it is agreed that the continuous existence and maintenance of such business status is a condition precedent to Contractor’s obligations hereunder. Subcontractor agrees that if it fails to continuously maintain its status as such a business or firm throughout the life of the Subcontract, if Subcontractor’s status as such a firm or enterprise is terminated at any time by any governmental authority having jurisdiction over the matter, or if Subcontractor hires or subcontracts a portion of its work such that any portion of its overall contract value is performed by entities that do not qualify under (i), (ii), or (iii) above, Contractor will have the absolute right and option to terminate this Subcontract immediately in accordance with the provisions in Articles 19 or 20.
- 2.3. Subcontractor Investigation. Subcontractor represents and warrants that, prior to entering into the Subcontract and to the extent necessary to understand all of the requirements applicable to the Subcontract Work, it has (a) *carefully examined* the Subcontract Documents; (b) *physically inspected* the Project Site; and (c) *fully investigated the type and nature of work* to be performed by it and all of the general and local conditions (both natural and artificial) and circumstances surrounding, or in any way affecting, such work. In particular, Subcontractor represents and warrants that it has fully considered and taken into account, without limitation, (i) the character of the Project Site, (ii) all relevant soils, water, site access, availability of storage areas, utilities, obstructions, traffic, working restrictions, limitations imposed under permits and/or the government authorities having jurisdiction over the Subcontract Work, and (iii) all other matters which *may affect performance of the Subcontract Work or its cost* under this Subcontract. Subcontractor acknowledges that any quantities shown in the Subcontract Documents, including but not limited to the Subcontract Purchase Order, are approximations and there is no guarantee of any specific quantity. Subcontractor agrees not to make any claim for an adjustment in the Subcontract Amount on account of any variation in quantities, and, except as otherwise modified pursuant to the provisions of this Subcontract, the Subcontract Amount is sufficient to perform the Subcontract Work. In the alternative, Subcontractor has waived these examinations and investigations. Subcontractor represents that it enters into the Subcontract solely on the basis of its own examination, inspection, and investigation and upon its asserted knowledge and experience in performing the Subcontract Work, and *not because of, nor in reliance upon, any representation or opinion rendered by either Contractor or Owner or any of their representatives, officers, employees, or agents*. Subcontractor further represents that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts among the Subcontract Documents, or Laws of which it has not notified Contractor.
- 2.4. No Security Interest in Subcontract. Subcontractor represents that it has not assigned any monies due or to become due under this Subcontract, and it has not otherwise created any security interest in this Subcontract.

Article 3 Scope of Work and Subcontractor's Responsibilities

- 3.1. Diligent Efforts. Subcontractor agrees to provide its diligent efforts and judgment to perform the Subcontract Work in strict accordance with the Subcontract Documents, and to the satisfaction of Contractor and Owner, all in a good workmanlike manner. Subcontractor will provide continuous and competent supervision over the performance of the Subcontract Work.
- 3.2. All Subcontract Work Included. Subcontractor agrees to perform all of the Subcontract Work identified in the Subcontract Documents, including incidentals not shown or specified but which may be required to provide a fully functional system. Subcontractor will perform all work that the drawings and Specifications require Contractor to perform relating to Subcontract Work.
- 3.3. Compliance with Laws. Subcontractor, and its subcontractors, will comply with all Laws.
- 3.4. Permits. Subcontractor will obtain and pay for all permits, fees, and licenses required to be in its name and necessary for execution of the Subcontract Work.
- 3.5. Prime Contract Obligations. Subject to Article 1.11 above, Subcontractor agrees to adhere to and be bound to Contractor by all of the provisions of the Prime Contract applicable to the Subcontract Work, and, insofar as the Subcontract Work is concerned, to assume towards Contractor all of the duties, obligations, risks, and liabilities that Contractor has assumed toward Owner under the Prime Contract, including, without limitation, all requirements relating to the quality, quantity, and timeliness of the work.
- 3.6. Names of all Subs and Suppliers. Subcontractor will provide to Contractor, within five (5) Days of the Effective Date of this Subcontract, the names and addresses of all material suppliers, manufacturers, and sub-subcontractors that Subcontractor intends to use in completing the Subcontract Work. Should any of those proposed be unacceptable to Contractor or Owner, Subcontractor will use another supplier, manufacturer, or sub-subcontractor acceptable to Contractor at no additional charge to Contractor.
- 3.7. Authorized Representative. Subcontractor will designate a person, subject to Contractor's approval, who will be Subcontractor's authorized representative with full authority to act for Subcontractor. Subcontractor agrees that any personnel named in the Subcontract Documents will be and remain committed full-time to the Project, unless otherwise agreed or requested in writing by Contractor.
- 3.8. Attendance at Meetings. Subcontractor's Superintendent or Foreman will attend all required progress and safety meetings while the Subcontract Work, or any part of it, is in progress, or as reasonably requested by Contractor, and will be prepared and authorized to address schedules, personnel, deliveries, and safety issues. Representatives of sub-subcontractors whose work is critical under the current schedule may also be required to attend these meetings.
- 3.9. Subcontractor Reports. Subcontractor's Superintendent or Foreman will report to Contractor's Superintendent before beginning work on the Project, and periodically thereafter as required by Contractor. Subcontractor will maintain daily logs in a form and degree of detail reasonably acceptable to Contractor, and will submit them to Contractor at its Project Site office at the end of each work day, or as requested. Daily reports will include a detailed description of the work performed, problems encountered, personnel levels, and deliveries of material and equipment.
- 3.10. Independent Contractor--Means and Methods. In all matters arising out of or relating to this Subcontract, ***Subcontractor is acting at all times as an independent contractor. Subcontractor is solely responsible for determining and implementing the means and methods for performing the Subcontract Work.*** In the performance of its obligations under the Subcontract, ***Subcontractor is solely responsible*** for hiring, training, supervising, and managing its employees, for maintaining discipline and attendance, and for decisions involving termination of employment.
- 3.11. Satisfactory Labor. In the performance of its obligations under the Subcontract, Subcontractor is solely responsible for hiring, training, supervising, and managing its employees, for maintaining discipline and attendance, and for decisions involving termination of employment. Subcontractor will employ only such labor as performs its services to the satisfaction of Contractor and in continuing harmony with other trades or employees employed at the Project. In the event of an actual or threatened dispute by or on behalf of labor employed on the work by Contractor or any subcontractor due to the employment of a person or persons by Subcontractor or the presence of Subcontractor on the Project, Subcontractor will forthwith make such arrangements as may be necessary to prevent strikes, work stoppages, delays, or expenses to Contractor, or discontinue the employment of any employee whose presence or conduct may be unsatisfactory to Contractor or whose continued presence on the Project is not in the interest of the prompt and proper execution of this Subcontract, the Prime Contract, or any other subcontractor's contract. Should Subcontractor fail to carry out this provision, Contractor may proceed with termination accordance with the provisions of this Subcontract.
- 3.12. Cooperation. Subcontractor will cooperate fully with Contractor, Contractor's Project Engineer, Contractor's Project Superintendent, and all other Subcontractors on the Project, and will be responsible for coordination of the Subcontract Work with all other trades to assure the efficient and orderly installation of each part of the Project. Contractor will not be

responsible for costs arising from conflicts between services or trades, including, without limitation, those conflicts resulting from lack of coordination.

- 3.13. Inspection for Discrepancies. Prior to performing any portion of the Subcontract Work, Subcontractor will *conduct a visual inspection of the Project Site and perform a careful analysis and comparison* of the Specifications, other Subcontract Documents, and information furnished by Owner related to the Subcontract Work. Should Subcontractor discover any deficiencies, discrepancies, ambiguities, inconsistencies, or errors with respect to the Subcontract Documents, *Subcontractor will report such discoveries to Contractor promptly* and prior to proceeding with the affected Subcontract Work. If, without notice to Contractor, Subcontractor performs Subcontract Work knowing of discrepancies or errors, or knowing it to be contrary to any Laws, Subcontractor will assume all responsibility for such work and will bear all associated costs, charges, fees, and expenses attributable thereto.
- 3.14. Shop Drawings and Submittals. Subcontractor will furnish Contractor, where applicable, with all necessary details, shop drawings, specification sheets, catalogs, test reports, samples, and schedules pertaining to items included in the Subcontract Work. These submittals will be delivered by Subcontractor within the number of days specified in the Prime Contract, or this Subcontract, or, if not stated, then within 30 Days of the signing of this Subcontract. Thereafter, revisions and further information from Subcontractor will be delivered, as soon as practicable, but not to exceed seven (7) Days of the delivery to Subcontractor of a request for such submittal. These submittals will be in the quantity, form, and manner prescribed by the Prime Contract, or, if not stated therein, by Contractor. Approvals will be only as to type and/or design, and Subcontractor will remain responsible for quantities, dimensions, and coordination with the actual Project conditions as they exist, and compliance with all conditions of the Subcontract Documents. Approval by Architect or Engineer and Contractor of drawings and other submittals will not be construed as authority to depart from or modify the Specifications. *The review and approval of any submittal will not be deemed to authorize changes, deviation or substitutions from any requirement of the Subcontract Documents unless Contractor gives express written approval specifically authorizing such deviation, substitution or change*, nor will the review of any shop drawings, cuts, samples, material lists, or other submissions relieve Subcontractor from responsibility for errors of any sort therein, or from the necessity of furnishing any Subcontract Work required by the Subcontract Documents, even if it may have been omitted from the shop drawings, cuts, samples, material lists, or other submissions. As far as practicable, each submittal drawing that has interface information will bear a cross-reference note referring to the sheet number or numbers of the contract drawings showing the same work.
- 3.15. Utilities. Subcontractor will relocate any utilities included in the Subcontract Work. Existing utilities not relocated will be protected as necessary. Location of existing utilities is the responsibility of Subcontractor.
- 3.16. Communications. Unless otherwise provided in the Subcontract, and except for emergencies, Subcontractor will direct all communications related to the Project to Contractor.
- 3.17. As-built Drawings. Subcontractor will update as-built drawings on a weekly basis, or as requested, and submit them to Contractor's Superintendent for review. Progress payments will not be released unless as-built drawings are current.
- 3.18. Clean-up. Subcontractor will at all times during the performance of the Subcontract Work keep the Project Site clean and free of debris resulting from the Subcontract Work, and will clean up and dispose of the materials as directed by Contractor. Subcontractor will make provisions to minimize and confine dust and debris from its construction activities. Prior to discontinuing Subcontract Work in an area, Subcontractor will clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. If Subcontractor fails to keep such areas clean or to remove such materials, Contractor, after giving Subcontractor twenty-four (24) hours written notice, may perform this work and the cost thereof will be deducted from any amounts due or to become due Subcontractor in the next payment period.
- 3.19. Office and Storage Facilities. Subcontractor will obtain prior approval from Contractor's superintendent prior to erecting or placing on the Project any storage or office facilities or any signs.
- 3.20. Traffic Control. Subcontractor will provide traffic control for its operations, as well as that of its suppliers, for any interruption of vehicular traffic, including traffic control plans, uniformed police officers, flagmen, barricades, and other measures required by any authority with jurisdiction over the Project.

Article 4 Subcontract Amount and Terms of Payment

- 4.1. Agreement to Pay. Contractor will pay the Subcontract Amount to Subcontractor for the satisfactory completion of its obligations hereunder.
- 4.2. Separated Contracts. If a separated contract is not already included in the Purchase Order, within ten (10) Days of the Effective Date of this Subcontract, Subcontractor will submit for Contractor's approval a schedule of values for all Subcontract Work, allocating the Subcontract Amount to the various parts of the Subcontract Work, made out in such detail and supported by such evidence as Contractor may require ("**Separated Contract**"). In applying for payment, Subcontractor will submit invoices based on the approved Separated Contract.

- 4.3. Retainage. Subcontractor will be subject to the retainage, if and where applicable, set forth in the Subcontract Purchase Order (“Retainage”), as permitted by law.
- 4.4. Payment Terms. Contractor will pay in accordance with the payment terms specified in the Subcontract Purchase Order, provided all other provisions of this Subcontract are being fulfilled by Subcontractor. For the avoidance of doubt, under no circumstances shall the payment terms specified in the Subcontract Purchase Order be interpreted as “Pay if Paid”, ***unless such provision is acknowledged in writing by a separate agreement executed between Subcontractor and Contractor.*** Subcontractor acknowledges the timing of payments due from Owner for the Subcontract Work as set forth in the Subcontract Documents, receipt of copies of which is hereby acknowledged.
- 4.5. Payment Conditions. Subcontractor must submit progress payment invoices to Contractor on a monthly basis, by the date specified by the Subcontract Documents, or by the project manager of Contractor if no date is specified in the Subcontract Documents. Subcontractor ***waives its right to receive payment for any Subcontract Work for which Subcontractor fails to submit an invoice within sixty (60) Days of completion of the Subcontract Work included in the invoice.*** Subcontractor agrees that progress payments and final payment are subject to the following additional conditions precedent: (i) Subcontractor must have submitted proof of insurance; (ii) Subcontractor must have submitted a completed W-9; (iii) Subcontractor must have submitted a complete invoice in a form and matter acceptable to Contractor; (iv) Owner and Contractor must have approved the Subcontract Work for which Subcontractor is invoicing as being in accordance with the Subcontract Documents; (v) Subcontractor must have furnished, at the request of Contractor, all forms of executed affidavits, lien waivers in compliance with state law applicable to the Project, and/or waiver of claims in such form as directed by Contractor; and (vi) Subcontractor must have executed and delivered evidence satisfactory to Contractor that ***no unpaid claims exist against Subcontractor for labor, materials, insurance, sales tax, any other governmental tax, or other obligations incurred by Subcontractor in the performance of the Subcontract Work,*** and in any event, will be provided prior to the release of final payment and/or Retainage (where applicable). Failure to satisfy any of these conditions will constitute a failure by Subcontractor to have performed in accordance with the provisions of this Subcontract so that payment will not be due until all conditions are satisfied.
- 4.6. Final Payment and Release of Retainage. Notwithstanding Section 4.4 above, any Retainage withheld and final payment will be paid to Subcontractor within the net terms upon receipt of completion from Owner for the Subcontract Work. ***Subcontractor’s acceptance of final payment constitutes a waiver by Subcontractor of all claims under the Subcontract except to the extent Subcontractor identifies pending or potential claims in writing in the application for final payment, in which case, the waiver will not apply to such identified claims.***
- 4.7. Stored Materials. In the event payment is made for materials stored away from the Project Site, such payment is subject to the following conditions: (a) Subcontractor must obtain advance approval from Contractor; (b) the materials must be stored at a location agreed upon in writing; (c) Subcontractor acknowledges that, upon receipt of payment, Owner has title to such materials and equipment; (d) Subcontractor must comply with procedures satisfactory to Contractor and Owner to protect Owner’s interest, which will include the applicable insurance, storage, security, and transportation to the Project Site for such materials and equipment stored off the Project Site, and (e) Contractor and Owner will be allowed right of entry onto the stored material site at their request, and, at their discretion, may take possession of any materials paid for. Contractor’s approval may be withheld at Contractor’s discretion, even if the Prime Contract allows for such payments, and may be conditioned upon reasonable requirements in addition to those stated herein. If payment for stored materials is permitted, those payments will be subject to Retainage. Additionally, Subcontractor may not request payment for overhead or profit attributable to such materials until they are delivered to the Project Site, and may not request payment for the labor to install such materials until they are installed.
- 4.8. Title to Subcontract Work. All Subcontract Work, wherever located, covered by progress payments received by the Subcontractor, is automatically the property of Contractor or, if the Prime Contract so provides, the property of Owner. This provision will not relieve Subcontractor from sole responsibility and liability for all work and materials upon which payments have been made, until final acceptance by Owner. **Title and Risk of Loss for Material Supply Only.** **Title to all or a portion of the Subcontract Work shall pass to Contractor upon the date of payment for the materials. Until delivery, Subcontractor shall bear all risk of damage or loss to any or all of the Subcontract Work. Subcontractor shall not make any claims against Contractor for any damage, or loss to the Subcontract Work occurring prior to delivery.**
- 4.9. Withholding Payments. To the maximum extent permitted by law, Contractor may withhold such payments as it may deem necessary to guarantee Subcontractor’s satisfactory performance of or compliance with any provisions of this Subcontract. No progress payment will be conclusive, and all payments will be subject to adjustment and/or correction in the final payment, subject to the dispute resolution provisions set out in Article 20 of this Subcontract. ***No payment will be construed to be an acceptance of any work nor will payment constitute a waiver of any rights granted to Contractor in the Subcontract.*** In addition, Contractor may also withhold payment, or may nullify the whole or a part of payment previously made, to such

extent as may be necessary in Contractor's opinion to protect Contractor from actual or potential loss directly or indirectly relating to Subcontractor or any act or omission of Subcontractor, including, but not limited to, unsatisfactory job progress, failure of Subcontractor to reimburse Contractor for amounts owed, submittals that are late, incomplete or unapproved, Defective Work, disputed work, liens (except Permissible Liens), third party claims, attorneys' fees, damage caused by Subcontractor to Contractor, Owner, or another contractor, or any other breach or failure to carry out the Subcontract Work in accordance with the Subcontract Documents. Contractor may also withhold amounts sufficient to satisfy any claims Contractor may have against Subcontractor arising out of other projects. This remedy of withholding payment is not exclusive. Contractor will pay Subcontractor amounts previously withheld when the above reasons for withholding payment are removed. If the reasons for withholding are not or cannot be remedied, Contractor may apply withheld amounts to offset its claims, damages, or costs.

- 4.10. Payment of Employees, Sub-subcontractors, and Suppliers. Subcontractor agrees to pay its employees, sub-subcontractors, suppliers, and others to whom it may be indebted within the length of time stipulated in their contract or by law. Subcontractor agrees to pay wages and benefits as required by any federal and/or state wage rate determinations. Subcontractor agrees to furnish, at any time during the progress of the Subcontract Work or upon completion thereof, satisfactory proof of compliance with the requirements of this Article, including but not limited to, providing certified payroll records for itself and its subcontractors. Subcontractor agrees that all payments made to Subcontractor, whether by joint check or otherwise, will first be used by Subcontractor to pay amounts due to employees, sub-subcontractors, or suppliers supplying labor or materials for the Subcontract Work, and that only money remaining after such payments are made may be used for any other purpose. Subcontractor expressly acknowledges and agrees that all monies received by Subcontractor from Contractor in connection with the Project will be held by Subcontractor in trust for the benefit of and for the purpose of paying to Subcontractor's sub-subcontractors and suppliers the amounts owed to or claimed by sub-subcontractors, suppliers, laborers, and unions arising out of the Subcontract Work performed, including all taxes, premiums on surety bonds, and insurance relating to this Subcontract. Subcontractor acknowledges that it has no claim or right of its own to any monies it owes to its employees, sub-subcontractors, vendors, and/or suppliers. This provision is not intended and will not be construed for the benefit of third parties, and will not be construed by the Parties or by third parties to require that dedicated sums of money or payments be deposited into separate accounts, or that there be other restrictions on comingling of funds.
- 4.11. Nonpayment of Sub-subcontractors, Suppliers, or Debts. If Contractor has reason to believe that Subcontractor is not complying with the payment terms of this Subcontract as it applies to Subcontractor's vendors and subcontractors, Contractor will have the right to contact Subcontractor's sub-subcontractors and suppliers to ascertain whether they are being paid by Subcontractor in accordance with this Subcontract. Subcontractor agrees that after three (3) Days' notice, Contractor may, but is not obligated to, pay all material-men, suppliers, laborers, sub-subcontractors, and any other persons who have not been paid the monies due to them in connection with this Subcontract, and that Contractor may credit the amount of any such payment against amounts otherwise due Subcontractor. Payments may be made directly to the sub-subcontractors or suppliers, or by joint check drawn to the order of Subcontractor and the sub-subcontractor or supplier at issue, whichever will seem more advantageous to Contractor in its sole discretion. This provision is intended for the protection of Contractor only, and does not confer rights upon anyone not a direct party to this Subcontract, as a third-party beneficiary or otherwise. Monies retained by Contractor as a result of Subcontractor's failure to make payments to sub-subcontractors or suppliers, and, consequently, any such payments made, whether directly or by joint check, will not constitute bankruptcy preferences.
- 4.12. Subcontractor Assignment of Payments. Without the written consent of Contractor, Subcontractor will not assign any moneys due or to become due under this Subcontract unless the assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should Subcontractor assign all or any part of any moneys due or to become due under this Subcontract to create a new security interest, or for any other purpose, the instrument of assignment will be void unless it contains a clause to the effect that the assignee's right in and to any money due or to become due to Subcontractor will be subject to the claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Subcontract Work.
- 4.13. Payment of Taxes. Subcontractor agrees to pay its unemployment compensation taxes as required by the state in which the Subcontract Work is being carried on, and all federal and state income taxes withheld from employees, as well as social security taxes, local taxes, and any other charges levied on Subcontractor by any local, state, or federal governmental agency.
- 4.14. No Liens or Claims Filed. Subcontractor will not directly or indirectly file, record, claim, assert or create or suffer to be created any lien on or affecting the Project or the Project Site, except to the extent of Contractor's unexcused failure to pay any portion of the Subcontract Amount when due to Subcontractor for Subcontract Work performed by Subcontractor or its subcontractors ("**Permissible Liens**"). Except for Permissible Liens, Subcontractor must immediately discharge, release and remove of record any and all liens on or affecting the Project or Project Site by agreement with the claimant or by posting sufficient security or bond to substitute for the lien. Upon the failure of Subcontractor to comply with the

requirements of the preceding sentence, Contractor will have the right to cause the release of such claim, lien, or attachment by payment or otherwise and upon such payment, discharge or posting of security therefore, Contractor will be entitled to immediately recover from Subcontractor all costs and expenses incurred by Contractor, including attorneys' fees, court costs, and all other expenses, in connection with such payment, discharge or posting, or set off of all such amounts against any sums owed by Contractor to Subcontractor.

Article 5 Subcontract Time and Progress of Subcontract Work

- 5.1. Project Schedule. Contractor will publish an initial project schedule that will be updated periodically ("**Project Schedule**"), Exhibit D. Promptly upon request by Contractor, but in no event later than seven (7) Days after such request, Subcontractor will furnish a detailed resource loaded schedule complete with all activities associated with the Subcontract Work demonstrating the Subcontract Work in coordination with and conformance to the Project Schedule. Subcontractor's on-site Representative will attend weekly coordination meetings as required by Contractor and will participate in the preparation of a three-week look-ahead schedule at each meeting. Without invalidating the Subcontract, Contractor will have the right to order that the Subcontract Work be performed in a difference sequence and/or at a difference time period than specified in the Subcontract Purchase Order or Project Schedule and Subcontractor agrees that it will not be entitled to any additional compensation as the result of such change in sequence or timing so long as the duration of the Subcontract Work is not shortened.
- 5.2. Staffing and Progress. Time is of the essence with respect to the progress of the Subcontract Work. Subcontractor agrees to commence the Subcontract Work as soon as practicable, not to exceed ten (10) Days of notice to commence given by Contractor, or when specified in the Project Schedule. Subcontractor agrees to complete the Subcontract Work within the Subcontract Time. The Subcontract Work will be carried out promptly, with dispatch, and coordinated with other work on the Project to the satisfaction of Contractor. Subcontractor agrees that it will furnish at all times adequate and competent labor, services, materials, equipment, tools, and supervision so that its performance will be carried out in accordance with the then current Project Schedule. Subcontractor will continuously monitor, report, forecast, and control the progress of the Subcontract Work in accordance with the Project Schedule.
- 5.3. Inadequate Resources or Progress. If the Subcontract Work is not progressing in accordance with the Project Schedule, Subcontractor will take appropriate corrective measures. Subcontractor will give Contractor notice in writing of any delay or anticipated delay within five (5) Days after the occurrence of the event giving rise to the delay or anticipated delay. The notice to Contractor will include a description of and the source or cause of the delay or the anticipated delay and the actions Subcontractor is undertaking to recover from or avoid the delay. If Contractor determines that Subcontractor is not adequately staffing the Project or adequately progressing the Subcontract Work in accordance with the Project Schedule, Contractor will provide written notice to Subcontractor of the staffing inadequacy or failure to progress the Subcontract Work. If Subcontractor fails to take steps that Contractor determines are necessary to recover from or avoid the delay or fails to bring its performance into compliance with the requirements of this Subcontract, Contractor may direct Subcontractor to recover schedule loss of the Subcontract Work by whatever means Contractor deems necessary, including, but not limited to, supplying additional labor, working overtime or additional shifts, and/or providing additional supervision and equipment, in order to recover and maintain the Project Schedule. Subcontractor will be solely liable for costs to recover schedule loss of the Subcontract Work except as provided below in Section 6.3. Further, if Subcontractor's recovery causes Contractor to incur additional costs, Contractor may deduct such costs from the Subcontract Amount as provided above in Section 4.9. If Subcontractor disagrees with an order to recover schedule loss, it will nonetheless comply, and may pursue a claim as provided in this Subcontract. Contractor's receipt of Subcontractor's notice of delay and/or Contractor's approval of Subcontractor's proposed action to recover the delay and/or Contractor's directive to recover schedule loss of the Work will not constitute a waiver of any right or remedy available to Contractor under this Subcontract or at Law or in equity, nor will it be deemed a waiver of the requirements of this Subcontract. If, within five (5) Days after receiving the written notice of inadequate staffing or failure to progress the Subcontract Work, Subcontractor fails to commence and continue satisfactory correction of the items set forth in the notice, then, without prejudice to any other rights or remedies it may have, Contractor has the right to supplement Subcontractor's workforce and/or take over any Subcontractor Work. Contractor's costs to supplement Subcontractor's forces or perform other Subcontract Work will be deducted from the Subcontract Amount as provided above in Section 4.9.
- 5.4. Liquidated and Other Delay Damages. If Contractor becomes liable to Owner for any liquidated or other delay damages arising out of Subcontractor's failure to complete the Subcontract Work by the required final completion date or any interim milestone completion dates specified in the Subcontract Documents, then Contractor will be entitled to recover from Subcontractor its share of such damages based on Subcontractor's proportionate share of fault for the delay. Subcontractor agrees that any liquidated damages provided for in the Subcontract Documents are a reasonable and fair estimate of the actual damages that would be suffered by Owner and/or Contractor, as applicable, due to delays in completion of the Project, and

therefore the specified liquidated damages are not a penalty. Subcontractor further agrees that in addition to distributing the damages for delay that may be assessed by Owner, Contractor will also assess the damages and expenses directly suffered by Contractor, including, but not limited to, extended site supervision costs, and such damages will be distributed among Contractor and all subcontractors according to each party's proportionate share of fault for the delay.

Article 6 Changes and Delays

- 6.1. Contractor's Right to Modify. Contractor may add to or subtract from the scope or timing of the Subcontract Work by written change order, and Subcontractor will promptly perform the Subcontract Work as modified. Except to the extent otherwise provided in this Subcontract, Subcontractor will be entitled to an equitable adjustment to the Subcontract Amount and Subcontract Time, as applicable, to the extent they are impacted, with respect to any addition or change to the scope, or change in timing of the Subcontract Work requested or required by Contractor.
- 6.2. Extensions of Time. In the event Subcontractor is delayed by a cause or event beyond its control, for which it is not responsible, and for which Contractor is entitled to relief under the Prime Contract (a "**Force Majeure Event**"), Subcontractor may request an extension of the Subcontract Time. Subcontractor will be entitled only to such extensions of time as Contractor actually receives from Owner, to the extent they apply to the Subcontract Work. Subcontractor acknowledges that any time extension is expressly conditioned upon Contractor's receipt of a time extension from Owner. Subcontractor further acknowledges and agrees that such a time extension will be the exclusive remedy for such a delay, except as set forth in Section 6.3 below.
- 6.3. Delay Claims. Subcontractor will not be entitled to cost reimbursement, compensation, or damages for any delay, obstruction, hindrance, or interference to the Subcontract Work, or for extension of the Subcontract Time, except to the extent that Contractor actually recovers corresponding cost reimbursement, compensation, or damages from Owner, and to the extent they apply to the Subcontract Work. Subcontractor acknowledges that any reimbursement, compensation, or damages for any Owner-caused delay, obstruction, hindrance, or interference, or for extensions of the Subcontract Time, is expressly conditioned upon Contractor's receipt of reimbursement, compensation, or damages from Owner. Subcontractor expressly agrees that it will contribute a fair and proportionate share of the costs of advancing Subcontractor's claim, including without limitation legal and other professional fees. Should the Subcontract Work be delayed by any acts or omission of Contractor, or other subcontractors, or anyone for whose actions either of the aforementioned may be responsible, then Subcontractor shall be entitled to an extension of the Subcontract Time as a result of such delay.
- 6.4. Quotes for Proposed Changes. If Contractor requests, Subcontractor will submit, within seven (7) Days after such request (or sooner, if necessary to meet deadlines in the Prime Contract), a reasonable price quotation for proposed changes. Notwithstanding anything to the contrary elsewhere in the Subcontract Documents, including Subcontractor's proposal, if included, Subcontractor's markup for overhead and profit on changed or added work will be no more than 10%, with the additional restriction that Subcontractor's markup will not exceed the markup permitted in the Prime Contract, if specified, or the markup allowed by Owner. *Subcontractor will insert the same requirement in its agreements with its subcontractors and suppliers.*
- 6.5. Change Directives. Without invalidating the Subcontract, Contractor may issue written direction ordering a change in the Subcontract Work within the general scope of the Subcontract consisting of additions, deletions, or other revisions, prior to agreement on adjustment, if any, in the Subcontract Amount or Subcontract Time, or both. Such direction will only be valid if signed by (i) an officer of Contractor or (ii) the Project specific Project Manager designated in writing by Contractor. *With respect to such written direction, Subcontractor will be entitled to a reasonable and equitable adjustment to the Subcontract Amount, Project Schedule and Subcontract Time, as applicable, to the extent they are impacted,* with respect to any addition or change to the scope, or change in the timing, of the Subcontract Work required by or resulting from Contractor's written directive. If Subcontractor is directed to proceed with changed or additional work on a time and materials basis, Subcontractor will submit for Contractor's signature on a daily basis documentation of all costs incurred pursuant to the directed changed or additional work, including all labor expended.
- 6.6. No Unauthorized Work, No Oral Modification. Before performing any work it does not consider to be within the scope of the Subcontract Work, Subcontractor will provide Contractor with a written change proposal request that includes a detailed cost breakdown and identifies the impact of the proposed change on the schedule. Subcontractor will not perform any additional or changed work, and will not be entitled to receive any extra compensation of any kind whatsoever, unless such extra or changed work order is authorized in writing and signed by an officer of Contractor. The Parties agree that no oral modification of the Subcontract, and no modification issued by any unauthorized person, will have any force or effect, and Subcontractor expressly waives claims arising out of oral or unauthorized modifications. Subcontractor will be liable for all damages incurred by Contractor arising from any unauthorized modification.

- 6.7. Changed Work, Unknown Conditions. Claims for (1) extra or altered work resulting from Owner-initiated changes, (2) any Force Majeure Event, or (3) delays or damages resulting from requirements, acts or omissions of Owner, will be governed by the provisions of the Prime Contract and Contractor will only make payments to Subcontractor on account of such claims only to the that Contractor is paid for such claims by Owner.
- 6.8. Finality of Change Orders. For each Change Order executed by both Parties, Subcontractor hereby acknowledges and agrees that the Change Order represents full compensation (both money and time) for, and constitutes a full settlement, discharge, accord, satisfaction, waiver, and release of:
- (a) any and all direct and indirect costs;
 - (b) any all impacts to the Subcontract Work, both changed and unchanged;
 - (c) any and all impacts due to the accumulation of changes to the date of the Change Order; and/or
 - (d) any and all delays

whether known or unknown as of the date of the Change Order, that arise out of, or are incidental to, the work and schedule revised by the Change Order. Each Change Order constitutes the entire and integrated understanding between Subcontractor and Contractor for the subject matter addressed in the Change Order, and supersedes all negotiations, representations, or agreements, either written or oral that occur prior to the execution of the Change Order.

Article 7 Labor and Compliance

- 7.1. Immigration Compliance. By signing this Subcontract, Subcontractor represents and warrants that it (a) has complied, is complying, and will continue to comply with provisions of the Immigration Reform and Control Act of 1986 (“IRCA”) as amended, the Immigration and Nationality Act, as amended, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all other applicable immigration laws, rules, and regulations (“Immigration Laws”); (b) has kept, and must keep, until seven (7) years after final completion of the Subcontract Work all Form I-9 (Employment Eligibility Verifications) for employees assigned to work for Subcontract at the Project Site, including copies of all documents confirming workers’ employment eligibility and identity and other required records; (c) must engage an outside auditor (an experienced immigration lawyer or consultant) who agrees to audit Subcontractor’s immigration compliance and required I-9 recordkeeping, and then certify the results of the audit to Contractor within as few as five (5) Days of any contractually authorized demand for audit made Contractor to Subcontractor either at random, or, in situations where Contractor has reason to believe Subcontractor may have violated Immigration Laws; (d) has responded, and will respond, promptly to any demand for inspection of Subcontractor’s immigration records by the Department of Homeland Security (“DHS”), any other government agency, or the outside auditor; (e) will immediately notify Contractor in writing and by face-to-face communication of any surprise inspections, Project Site enforcement actions, inquiries, visits, audits, or investigations by DHS or any other governmental agency concerning any immigration compliance issues; (f) at Contractor’s request, will set up a program under which Subcontractor issues each of its employees working at the Project Site a badge certifying that any employee of Subcontractor or of a sub-subcontractor assigned to the Project Site and carrying the badge is authorized to work in the United States; and (g) will discharge or remove any employee assigned to the Project Site who Contractor reasonably believes lacks employment authorization, or, face unilateral termination of the Subcontract by Contractor. Subcontractor agrees to indemnify, defend (including attorneys’ fees and costs), and hold harmless Contractor from any claims and liabilities, including any damages resulting from work stoppages or delays occasioned by or arising from any Subcontractor noncompliance with IRCA or any Immigration Laws.
- 7.2. No Discrimination; Equal Opportunity Employer. Contractor is an Equal Employment Opportunity employer committed to the principles of equal employment opportunity. Contractor does not discriminate based on marital status, race, color, gender, religion, national origin, gender identity, age, veteran status, union affiliation, disability, or sexual orientation. Contractor is committed to employing and advancing qualified veterans and individuals with disabilities. In the hiring, promotion, transfer, and discharge of employees, Subcontractor must also be an Equal Opportunity Employer, and agrees as follows:
- a. **Subcontractor must abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741-5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Additionally, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.** Such action will include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subcontractor agrees to post in conspicuous

- places, available to employees and applicants for employment, notices to be provided by Contractor setting forth the provisions of this nondiscrimination clause.
- b. Subcontractor must, in all solicitations or advancements for employees placed by or on behalf of Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - c. Subcontractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Subcontractor's legal duty to furnish information.
 - d. Subcontractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by Contractor, advising the labor union or workers' representative of Subcontractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.
 - e. Subcontractor must comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - f. Subcontractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by Contractor, Owner, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - g. In the event of Subcontractor's noncompliance with the nondiscrimination clauses of this Subcontract or noncompliance with any applicable nondiscrimination rules, regulations, or orders, this Subcontract may be cancelled, terminated, or suspended in whole or in part and Subcontractor may be declared ineligible for Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - h. Subcontractor must include the provisions of Sections 7.2 (a) through (h) herein in every subcontract or purchase order, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Subcontractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.
 - i. **Subcontractor acknowledges and represents that it complies with the requirement in 41 CFR 60-1.8 and that it has been notified of the requirement to certify it does not maintain segregated facilities and will not permit its employees to perform services at segregated facilities, and Subcontractor agrees to obtain similar certification from its sub-subcontractors prior to award of any sub-subcontracts in connection with this Subcontract.**
- 7.3. Anti-Bribery and Anti-Corruption. In fulfilling its obligations pursuant to the Agreement, Subcontractor must comply with all Laws relating to anti-bribery and anti-corruption, including, to the extent applicable, but not limited to, the United States Foreign Corrupt Practices Act ("FCPA") and the Canadian Corruption of Foreign Public Officials Act. In accordance with this understanding, Subcontractor represents that it, any parent and affiliates, and each of their owners, directors, officers, employees, agents and every other person acting on their behalf, has not and will not, in connection with any business transactions involving Contractor, directly or indirectly, (a) offer, promise, authorize or make any payments of money or anything of value to any Government Official (as defined below) or to any agent or intermediary for further payment to any Government Official, in order to (i) influence the acts or decisions of any Government Official, (ii) induce any Government Official to do or omit to do any act in violation of a lawful duty, (iii) obtain any improper advantage, or (iv) induce any Government Official to use his or her influence in order to affect any government act or decision, or in order to obtain, retain, or direct business to any person or entity; or (b) otherwise offer, promise, authorize or pay any illegal bribe, kickback or other payment in violation of any Applicable Law; which prohibition includes "Facilitation Payments" (as defined in the FCPA). As used in this Section, a "Government Official" includes any appointed, elected, or honorary official, or any career or other employee of any foreign national, regional or local government or of a public international organization, any foreign political

party or party official, or any candidate for foreign political office, in any country. The term “government” as used in this Section includes any agency, department, embassy, or other government entity or instrumentality, as well as any company or other entity owned or controlled by the government, in whole or in part. Subcontractor will further require that all of its vendors, suppliers, agents and subcontractors are not only aware of these obligations, but will additionally acknowledge their compliance in writing.

- 7.4. Integrity and Compliance. Subcontractor personnel must observe and comply with Contractor’s Business Ethics and Code of Conduct (Exhibit H) in performing this Subcontract. Subcontractor must maintain an integrity and compliance program acceptable to Contractor and effective in preventing and correcting ethical violations and in maintaining compliance with laws.

Article 8 Health, Safety, and Environmental Requirements

- 8.1. Safety is First Priority. Providing a safe and healthy work environment – injury free – for all personnel is Subcontractor’s number one priority and responsibility.
- 8.2. Safety Standards. Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. Subcontractor must comply with all applicable Laws in performing the Subcontract Work, and must meet the most stringent standard of (a) all Owner requirements, (b) all requirements in the Alliance Safety Policy and Site Specific Policies (ref. Exhibit E and Exhibit F), and (c) all federal, state, and local requirements in order to promote the safe and orderly prosecution of the Subcontract Work. Contractor reserves the right to supplement or modify safety requirements at any time to meet specific Project conditions or additional Owner or Contractor requirements.
- 8.3. Subcontractor Implementation of Safety Measures. Subcontractor must implement safety measures on the Project Site that include, but are not limited to, as applicable, (a) posting appropriate warnings and notices, (b) erecting safety barriers, (c) establishing notice procedures to protect persons and property at the Project Site and adjacent to the Project Site from injury, loss, or damage, and (d) performing frequent and regular inspection of the Project Site, materials, and equipment by Competent Persons (defined below) designated by Subcontractor. Subcontractor must notify Contractor immediately of any unsafe working condition at the Project Site observed by Subcontractor or its employees or subcontractors, and will not require its employees or subcontractors to continue to work in any unsafe area until such condition is corrected or otherwise ceases to exist. Subcontractor must ensure that its subcontractors understand and specifically agree to comply with the requirements of this Article 7. At any time, Contractor has the right, in its sole discretion, to remove any individual from the Project Site, or deny access to any individual to the Project Site due to that individual’s failure to perform work in a safe manner, as determined by Contractor. Subcontractor will further document, for future reference, compliance with the foregoing obligations.
- 8.4. Employee Training. Subcontractor must provide its employees with all training (including without limitation hazard communication training) and personal protective equipment necessary for them to perform the Subcontract Work in a safe and efficient manner, and must familiarize its employees with all applicable workplace health and safety (including as applicable, but not limited to, OSHA) regulations and Contractor’s safety rules and policies, and will additionally document, for future reference, such compliance.
- 8.5. Safety Representative. Subcontractor will designate an individual at the Project Site employed by Subcontractor who will act as Subcontractor’s designated safety representative with a duty to prevent accidents (“**Safety Representative**”). Unless otherwise identified by Subcontractor in writing to Contractor, the Safety Representative will be Subcontractor’s project superintendent, however at any time Subcontractor has twenty-five (less if the Prime Contract sets a more strict standard) or more employees (to include sub-subcontractor employees) working on the Project Site at the same time, or upon Contractor’s request, Subcontractor must provide a Safety Representative whose sole project duty is Safety Representative, who will provide continuous safety supervision of the Subcontract Work. The Safety Representative will attend Project Site safety meetings as requested by Contractor. Subcontractor’s Safety Representative will coordinate/communicate regularly (at least weekly) with Contractor’s Safety Representative and review safety at the Project Site. Subcontractor must also assign at least one (1) Competent Person to be on the Project Site at all times for any activity that requires a Competent Person under applicable OSHA standards or Alliance’s safety policies and procedures. “**Competent Person**” means someone with a minimum 30-hour OSHA training, who is capable of identifying existing and predictable hazards and who has the authority to take prompt corrective measures to eliminate them.
- 8.6. Reportable Incidents. Subcontractor must notify Contractor immediately following a reportable incident at the Project Site under applicable rules, regulations, orders, and other lawful requirements, and must promptly confirm the notice in writing. Whether or not required under applicable Laws, Subcontractor must notify Contractor immediately upon any incident at the Project Site that could have resulted in serious bodily injury or property damage, whether or not such an injury was sustained or any property was damaged. A detailed lesson learned report must be completed on all incidents.

- 8.7 Subcontractor Responsibility. Prevention of accidents at the Project Site is the responsibility of Contractor, Subcontractor, and all other subcontractors, persons and entities at the Project Site. Establishment of a safety program by Contractor will not relieve Subcontractor or other parties of their safety responsibilities, and Contractor does not assume the responsibility for the exercise of safety precautions that may be necessary or appropriate in connection with the Subcontract Work being performed by Subcontractor. Contractor is relying on the skill and expertise of Subcontractor to protect workers on the Project Site. Subcontractor will be responsible for all safety precautions that may be necessary or appropriate in connection with the performance of the Subcontract Work, and Contractor hereby delegates to Subcontractor any responsibility that Contractor may have to provide a safe workplace for Subcontractor's employees.
- 8.8 Safety Directives. Without limiting or narrowing Subcontractor's exclusive responsibilities and liabilities for safety in performing the Subcontract Work, Subcontractor agrees that Owner and Contractor have the right, *but not the responsibility*, to issue directives or rules to Subcontractor to change or correct conditions, conduct, practices, or methods caused or employed by Subcontractor which, in the sole judgment of Contractor, are or could cause or create a hazardous condition or violation of applicable safety requirements at the Project Site, whether or not Subcontractor agrees that those directions or rules are actually required in order to comply with applicable Laws, and to do so without further compensation from Contractor for such compliance. Subcontractor agrees to make no claim, and hereby expressly waives any right to make a claim, for any increased costs or delays, which Subcontractor believes are or will be caused by the issuance of such directives. The Parties further agree that in no event will the foregoing two sentences be considered or deemed an assumption by Contractor of Subcontractor's sole liability for noncompliance with applicable safety requirements and safe working conditions. Contractor's failure to stop any unsafe practice by Subcontractor will not relieve Subcontractor of the responsibility therefore.
- 8.9 OSHA Compliance. Subcontractor must comply fully with the Federal Occupational Safety and Health Act of 1970 as amended. Subcontractor will reimburse Contractor for all penalties levied against Contractor by the Department of Labor resulting from Subcontractor's violations of OSHA. Any such fines imposed on Contractor will be deducted from the Subcontract Amount as a back-charge. In addition, Subcontractor will reimburse Contractor for all expenses incurred by Contractor in conjunction with any investigation of Subcontractor's work by the Department of Labor, including, but not limited to, attorneys' fees and consultant fees. Subcontractor must provide safe working conditions for its employees and for all others on the Project whose duties necessarily require them to be in, on, or about the area where Subcontractor is working. Contractor's Project Superintendent may order Subcontractor to remove from the Project Site anyone found in violation of any of these provisions. The obligations of Subcontractor as to safety as required by this Article are additional and supplementary to the other safety precautions which may be necessary or appropriate in connection with the performance of the Subcontractor Work and for which safety precautions Subcontractor is responsible. In the case where the Alliance and/or Site Specific safety standard exceeds the OSHA standard, Subcontractor will meet the more restrictive of the Alliance and/or Site Specific standard.
- 8.10 Project Site Subcontractor Hours & Injuries Reporting. Subcontractor must submit its Hours & Injuries (H&I) data related to the Project upon request by Contractor. If requested, such H&I data, in an acceptable format, must accompany every invoice that Subcontractor submits. IF requested, such H&I data must be specific to, and correlate with, the Subcontract Work for which Subcontractor invoices.
- 8.11 Environmental Standards and Compliance. In order to promote environmentally responsible prosecution of the Subcontract Work, Subcontractor must meet the most stringent standard of (a) all Owner requirements for environmental controls, (b) all Contractor requirements for environmental controls, and (c) all Laws pertaining to environmental controls (collectively, "**Environmental Standards**"). Contractor reserves the right to supplement or modify Environmental Standards at any time to meet specific Project conditions, changes in Laws, or additional Owner or Contractor requirements. Subcontractor must attend all environmental orientations or meetings as scheduled by the Contractor. As part of Subcontractor's daily inspection of the Subcontract Work, Subcontractor must include inspection for compliance with all Environmental Standards, and must report the results of these inspections to the Contractor. Subcontractor must immediately report to Contractor any violations of any Environmental Standards.

Article 9 Hazardous Materials

- 9.1. Hazardous Materials Management Program. Where applicable, Owner's Hazardous Materials Management Program is available to all employees and Subcontractor employees for review, if available. The purpose of this program is to promote the safety and health of all individuals and to make each person aware of the hazardous materials that s/he may come in contact with, the nature of the hazard, and how to take the proper precautions while dealing with these materials. Prior to starting any task, all Subcontractor employees must be informed of the chemical hazards associated with the project operations and of the protective measures that can be taken while performing work on the Project Site. Contractor's Project Supervisor assigned to Subcontractor will be responsible for coordinating and documenting the flow of information between the Facilities Hazardous Materials Coordinator ("FHMC", who may be a site specific employee) and Subcontractor. The FHMC is responsible for passing on the hazards and of the protective measures to be taken. The FHMC is also responsible for passing on the hazard information received from Subcontractor to the appropriate departments.
- 9.2. Compliance with Regulations. Subcontractor will comply in all respects with all Laws regarding the communication of hazards to all persons, including, but not limited to, Subcontractor's employees and other employees on the Project Site. Before introducing to the Project Site any substance defined by any Laws as toxic or hazardous ("**Hazardous Materials**"), Subcontractor will inform Contractor in writing, and will provide to Contractor and to other employers on the Project Site all information necessary to prevent risk of harm to any individual. Such information will include, but not be limited to, the name(s) of any Hazardous Substances, Safety Data Sheets ("**SDS**"), and information regarding the labeling system in use, and the necessary protective measures and procedures for safe handling of the Hazardous Substance. Subcontractor will provide supplemental information as necessary.
- 9.3. Safety Data Sheets. All Hazardous Materials delivered to the Project Site as part of the Subcontract Work must be clearly labeled to indicate the contents, the appropriate hazard warnings (including routes of entry and target organs) and the name and address of the manufacturer, and must be accompanied by a Safety Data Sheet ("**SDS**"). The SDS will be attached to the delivery slip and given directly to Contractor's Project Superintendent at the time of delivery. No payment will be made for such materials without the required SDS. Subcontractor must obtain the necessary SDS from Contractor for the materials supplied by Contractor to be used on the Project.
- 9.4. "Right to Know" Training. Subcontractor's personnel must be trained as required in the "Right to Know" Laws for handling hazardous materials and document the completion of their worker training program prior to project initiation.
- 9.5. Subcontractor Hazards. Subcontractor must inform Contractor employees who enter the Project Site of the hazards introduced by performance of the Subcontractor Work.
- 9.6. Handling and Disposal. Subcontractor must comply with all Laws governing the proper handling and disposal of all hazardous wastes arising out of the Subcontract Work, and will be responsible for the proper disposal of any and all wastes, hazardous or otherwise, generated by the Subcontract Work. Prior to removing any wastes from the Project Site, Subcontractor must submit to Contractor copies of all manifests issued as a result of the handling and disposal of hazardous materials. The Project Owner will be named as the Generator on all manifests unless otherwise specified by Contractor.
- 9.7. Unforeseen Hazardous Materials. In the event Subcontractor encounters on the Project Site material that might reasonably be considered to contain polychlorinated biphenyl (PCB), lead, asbestos, or other hazardous material, Subcontractor will, upon recognizing the condition, immediately stop working in the affected areas and report the condition to Contractor both verbally and in writing.

Article 10 Quality and Acceptance of Work

- 10.1. Tests and Inspections. Subcontractor will schedule all required tests, approvals, and inspections of the Subcontract Work at appropriate times so as not to delay the progress of the work. Subcontractor will give written notice to all required parties of such tests, approvals, and inspections. Except as otherwise provided in the Subcontract, Subcontractor will bear all expenses associated with tests, inspections, and approvals (including without limitation the cost to uncover, make accessible and then-recover any Subcontract Work that is covered or inaccessible at the time of inspection) required of the Subcontract Work by the Subcontract or Laws which, unless otherwise agreed to, will be conducted by an independent testing laboratory or entity approved by Contractor and Owner. Where required, certificates of testing, approval, or inspection will, unless otherwise required by the Subcontract Documents, be secured by Subcontractor and promptly delivered to Contractor. Subcontractor will provide sufficient, safe, and appropriate facilities at all times for inspection of the Subcontract Work by Contractor or Owner. The inspection may be at the Project Site or at any place where Subcontract Work or materials may be in preparation, manufacture, storage, or installation.
- 10.2. Defective Work. In the event the Subcontract Work fails to conform to the requirements of the Subcontract Documents ("**Defective Work**"), at Contractor's option, Subcontractor will (a) reimburse Contractor for the costs expended by Contractor

to remove, replace, and/or repair the Defective Work, (b) remove, replace, and/or repair the Defective Work immediately upon notice from Contractor to Subcontractor; or (c) at the option of Contractor, reimburse Contractor for the difference between the fair value of the Defective Work and its value if it had complied with the Subcontract Documents. In the event Subcontractor corrects the Defective Work in accordance with (b) set forth above, Subcontractor shall reimburse Contractor for the Contractor's costs resulting from Subcontractor's correction of the Defective Work, including costs of re-testing and re-inspecting Subcontractor's work. At Contractor's option, any reimbursement due from Subcontractor pursuant to this Section 10.2 may be deducted from payments due, or to become due, to Subcontractor as provided above in Section 4.9. The remedies and provisions of this paragraph are intended to be cumulative and to supplement the obligations and remedies provided elsewhere in this Subcontract.

- 10.3. Punch List. Subcontractor will commence and continue to correct all items identified on any punch list pertaining to the Subcontract Work within a reasonably prompt period of time after receipt by Subcontractor of the punch list. If Subcontractor fails to commence this work promptly and/or to complete this work within a reasonably prompt period of time, Contractor will perform this work and deduct the cost thereof from sums otherwise due Subcontractor.
- 10.4. Acceptance of Work. The Subcontract Work will be accepted or rejected according to the requirements of the Subcontract Documents. Unless otherwise specifically agreed in writing, neither payment nor entrance and use by Owner or Contractor will constitute acceptance of the Subcontract Work.

Article 11 Warranty

- 11.1. Subcontractor Warranty. Subcontractor specifically guarantees, for the benefit of Owner and Contractor, the Subcontract Work to the full extent Contractor is required to guarantee or warranty the Subcontract Work under the Prime Contract or by applicable law. If the Prime Contract does not contain any warranty or guaranty with respect to the Subcontract Work, then the following warranty applies: Subcontractor hereby warrants to Contractor (which warranty Contractor may assign to Owner) that (a) the Subcontract Work will be free of defects in materials and/or workmanship and will be performed by Subcontractor in a professional and workmanlike manner in accordance with the Subcontract Documents, applicable Laws, and industry standards ("**Subcontractor Warranty**"), and (b) period of one (1) year extending from the later to occur of (a) Substantial Completion, (b) the commencement of Commercial Operation, or (c) the date of delivery of the improper, defective or non-conforming material or workmanship. If any machinery, equipment, materials or other items furnished under this Agreement are replaced during the last six months of the original warranty relating thereto, the warranty for such items shall be deemed extended until six months after the date of replacement. In addition to correcting the improper, nonconforming or defective Work itself, the Contractor shall bear all costs and expenses associated with correcting such warranted Work, including without limitation necessary disassembly, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Work, and disassembly and reassembly of adjacent work when necessary to give access to the improper, defective or nonconforming Work. If the Subcontract Work fails to conform to the Subcontractor Warranty, Subcontractor will, within a reasonable time after receipt of written notice from Contractor, commence the repair or replacement of the nonconforming or defective Subcontract Work, together with any damage caused by such nonconformity or defect to adjacent work or property.

Article 12 Bonds

- 12.1. Bonds. At any time during the Project, Contractor may require Subcontractor to furnish payment and performance bonds, or alternate security to secure the payment and performance of its obligations hereunder, in the full Subcontract Amount. The bonds will be on a form prescribed by Contractor, and with a surety listed in the U.S. Department of the Treasury's Listing of Approved Sureties (Circular 570), and for the penal sum required by Contractor in its sole discretion. Subcontractor will furnish the bonds within seven (7) Days after request. Subcontractor's failure to provide the bonds will constitute a default hereunder.
- 12.2. Payment for Bonds. If the requirement for bonds is identified prior to entering the Subcontract, the cost of the bonds will be included in the Subcontract Amount. If the requirement for bonds arises after the Subcontract is executed, Contractor will compensate Subcontractor for the actual cost of obtaining such bonds.

Article 13 Insurance

- 13.1. Insurance Requirements. Subcontractor and all sub-subcontractors at all tiers will obtain and maintain insurance of the types and amounts required of Contractor in the Prime Contract, or as set forth in Exhibit B to this Subcontract, whichever is greater. The insurance must be in effect before Subcontract Work commences, and must remain in effect until final completion of the Subcontract Work, or until such later time as the Subcontract Documents or Exhibit B state. In specifying

minimum requirements, Contractor does not represent that such insurance is adequate to protect Subcontractor for loss, damage, or liability arising from its work. The insurance requirements herein will not be construed to relieve Subcontractor for liability in excess of such coverage, nor will it preclude Contractor from taking any other actions available to it under this Subcontract or Law. To the extent Subcontractor maintains insurance greater in scope and/or limits than these minimum requirements, Subcontractor agrees that such insurance will be applicable to any of Subcontractor's liability and indemnity obligations hereunder, including that of the additional insured coverage, which will apply in full and without limitation.

- 13.2. Verification of Coverage. Prior to commencing Work, Subcontractor will furnish Contractor with certificate(s) of insurance executed by a duly authorized representative of each insurer, as evidence of compliance with the insurance requirements herein. Such certificate(s) of insurance will be accompanied by copies of endorsements evidencing coverage afforded to Contractor and Owner as additional insured, and endorsements reflecting insurer's concurrence with Subcontractor's waiver of recovery or subrogation rights against Contractor and Owner. Renewal certificates are to be provided to Contractor prior to the expiration of the required insurance policies. Certified copies of policies, including all policy endorsements, will be furnished by Subcontractor within fifteen (15) Days of written request by Contractor. The certificate(s) of insurance will be subject to approval of Contractor, but failure of Contractor to request such certificate or other evidence of Subcontractor's compliance with insurance requirements, or failure of Contractor to identify deficiencies from evidence that is provided, will in no way limit or relieve Subcontractor of its obligations to maintain such insurance.
- 13.3. Failure to Maintain Insurance. Failure of Subcontractor to maintain the required insurance will constitute a material breach entitling Contractor to terminate the Subcontract for default, withhold payment, and/or purchase the required insurance at Subcontractor's expense. Any delays in the completion of the Subcontract Work due to Subcontractor's failure to obtain or maintain insurance will be treated as delay due to Subcontractor's breach of contract.
- 13.4. Waiver. Contractor and Subcontractor waive all rights against each other and Owner, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or other similar insurance covering improvements or materials at the Project Site, except such rights as they may have to the proceeds of such insurance. Subcontractor will obtain similar waivers from its subcontractors and suppliers. A specific intent of the foregoing is to extend any available Builder's Risk insurance for the benefit of subcontractors and suppliers of any tier, but only to the extent of their financial interests in the covered property. Any deductible amounts applied to covered claims are not waived. Subcontractor further agrees to waive all rights of recovery against Contractor, Owner, other contractors, their agents and employees, and will cause each of its subcontractors and suppliers to waive the same rights of recovery, as respects loss, damage, claims, suits or demands, howsoever caused: (a) to real or personal property, vehicles, equipment, tools, etc. owned, leased or used by Subcontractor or Subcontractor's employees, agents or sub-subcontractors; and (b) to the extent such loss, damage, claims, suits or demands are, or should be, afforded coverage by Subcontractor's required or any other insurance maintained by Subcontractor. This waiver will apply to all first party property, equipment, vehicle, and workers' compensation claims (unless prohibited under applicable state law), and all third party liability claims. This waiver will apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by Subcontractor.

Article 14 Indemnification

- 14.1. INDEMNIFICATION OBLIGATION. EXCEPT AS OTHERWISE PROVIDED FOR IN SECTION 21.4 BELOW, SUBCONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS CONTRACTOR AND OWNER, AND EACH OF THEIR PARENT, AFFILIATES, SUBSIDIARIES, SUCCESSORS, AND ASSIGNS, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, AND EMPLOYEES, AND ANY OTHER PERSON OR ENTITY REQUIRED BY THE PRIME CONTRACT ("INDEMNITEES"), FROM AND AGAINST ANY AND ALL DAMAGES, COSTS, EXPENSES, CLAIMS, CAUSES OF ACTION, SUITS, OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, OTHER LEGAL FEES, EXPENSES OF LITIGATION, AND EXPERT FEES INCURRED BY INDEMNITEES ("LOSSES"), ARISING OUT OF OR RELATING TO THIS SUBCONTRACT OR THE PERFORMANCE OF THE SUBCONTRACT WORK, AND ARISING OUT OF OR RELATING TO: (A) INJURY TO, OR ILLNESS OR DEATH OF, ANY PERSONS, OR DAMAGE TO OR LOSS OF ANY PROPERTY (INCLUDING POLLUTION, CONTAMINATION, OR ENVIRONMENTAL DISTURBANCES), BUT ONLY TO THE EXTENT ARISING OUT OF THE NEGLIGENCE, INTENTIONAL MISCONDUCT, OR OTHER LEGAL FAULT OF SUBCONTRACTOR OR ITS LOWER TIER SUB-CONSULTANTS, SUB-SUBCONTRACTORS, SUPPLIERS, EQUIPMENT RENTAL COMPANIES, TRANSPORTATION COMPANIES, OR ANY OTHER ENTITY FOR WHOM SUBCONTRACTOR IS RESPONSIBLE, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, OR EMPLOYEES ("SUBCONTRACTOR GROUP"), AND ANY EMPLOYEES OF SUBCONTRACTOR GROUP; (B) CONTRACTUAL LIABILITY; (C) EMPLOYMENT CLAIMS ASSERTED BY EMPLOYEES OF SUBCONTRACTOR GROUP; (D) INFRINGEMENT OR VIOLATION OF PATENTS, TRADEMARKS, COPYRIGHTS, TRADE SECRETS, OR INTELLECTUAL PROPERTY RIGHTS; (E) THE VIOLATION OF ANY LAWS; OR (F) EXCEPT FOR PERMISSIBLE LIENS, THE ASSERTION OF ANY LIENS, SUITS, OR CLAIMS BY ANY INDIVIDUAL OR ORGANIZATION TO WHICH SUBCONTRACTOR IS INDEBTED (PROVIDED CONTRACTOR IS NOT IN DEFAULT OF ITS PAYMENT OBLIGATIONS HEREUNDER). SUBCONTRACTOR'S

OBLIGATIONS UNDER THIS SECTION 14.1 WILL BE IN ADDITION TO ANY INDEMNIFICATION, HOLD HARMLESS, OR DEFENSE OBLIGATIONS OR LIABILITY IMPOSED UNDER THE PRIME CONTRACT, WHICH OBLIGATIONS SUBCONTRACTOR EXPRESSLY AGREES TO ACCEPT TO THE SAME EXTENT REQUIRED OF CONTRACTOR IN THE PRIME CONTRACT. SUBCONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS SECTION 14.1 WILL NOT BE LIMITED BY APPLICABLE WORKERS' COMPENSATION LAWS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS, AND, WITH RESPECT TO THIS INDEMNITY, SUBCONTRACTOR HEREBY EXPRESSLY WAIVES ALL IMMUNITIES, DEFENSES, AND CLAIMS IT MAY HAVE UNDER SUCH LAWS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SUBCONTRACT, SUBCONTRACTOR SPECIFICALLY ACKNOWLEDGES THAT THE PRIME CONTRACT MAY INCLUDE THE OBLIGATION TO INDEMNIFY THE INDEMNITEES FOR THEIR OWN NEGLIGENCE OR OTHER FAULT; THAT IT HAS REVIEWED OR HAS HAD THE OPPORTUNITY TO REVIEW CONTRACTOR'S INDEMNITY OBLIGATIONS IN THE PRIME CONTRACT; AND THAT, IN DOING SO, SUBCONTRACTOR HAS HAD FAIR NOTICE OF ANY SUCH OBLIGATIONS AND HEREBY WAIVES THE RIGHT TO DISPUTE SUCH NOTICE.

Article 15 Subcontractor's Liability and Waiver

- 15.1. Liability for Work. Subcontractor hereby assumes the entire responsibility and liability for all Subcontract Work until final acceptance of the Project by Owner. In the event of any loss, damage, or destruction thereof from any cause, Subcontractor will be liable for it, and will repair, rebuild, and make good the loss, damage, or destruction at Subcontractor's own cost, except to the extent that any payments are made pursuant to any builder's risk insurance carried by Owner or Contractor for the Project.
- 15.2. **WAIVER OF CONSEQUENTIAL DAMAGES. EACH PARTY WAIVES ANY RIGHT TO CLAIM AGAINST OR RECOVER FROM THE OTHER PARTY THE FOLLOWING: INDIRECT OR CONSEQUENTIAL DAMAGES, ANTICIPATORY OR LOST PROFIT DAMAGES, OR PUNITIVE OR EXEMPLARY DAMAGES. IN NO EVENT WILL CONTRACTOR OR OWNER BE LIABLE TO SUBCONTRACTOR FOR ANY SUCH DAMAGES. FOR THE AVOIDANCE OF DOUBT, UNDER NO CIRCUMSTANCES SHALL DAMAGES CLAIMED BY A THIRD PARTY ARISING FROM AN INDEMNITY OBLIGATION HEREIN BE CONSIDERED CONSEQUENTIAL DAMAGES OR WAIVED BY THIS SECTION 15.2.**

Article 16 Default

- 16.1 Circumstances of Default. Without limitation, Subcontractor agrees that it materially breaches the Subcontract and is in default ("Default") if Subcontractor (a) fails for any reason to supply enough properly skilled workers and/or sufficient amounts of materials, equipment, or supplies to perform the Subcontract Work promptly, in accordance with the Subcontract Documents and/or the schedules established by Owner or Contractor, or misses any milestones that have been established in the schedule; (b) fails to pay promptly for materials, supplies, labor, or other items purchased or used in connection with the Subcontract Work; (c) violates any Laws; (d) interferes with, disrupts, or threatens to interfere with or disrupt the operations of Contractor, Owner, any other laborer, supplier, subcontractor, or other person working on the Project; (e) has filed against it any lien for unpaid taxes for federal, state, or municipal authorities; (f) fails to obtain or maintain all required insurance coverages for the full term required by the Subcontract Documents; (g) fails, upon demand, to comply with any Subcontract provision relating to the removal of liens (other than Permissible Liens) that have been placed upon the Project or relating to defense of lien claims; (h) fails to comply with any of its indemnification obligations hereunder; (i) fails to carry out the Subcontract Work in full compliance with the Subcontract Documents; (j) violates and of the safety or environmental requirements set forth in the Subcontract Documents; (k) files a voluntary petition under any chapter of the Bankruptcy Code, has an involuntary petition filed against it, makes a general assignment for the benefit of creditors, or has a receiver appointed for it in any court, (l) after demand, fails to furnish adequate assurances it will and can complete the Subcontract Work as required herein, or (m) otherwise fails to perform any of its obligations contained in this Subcontract. .
- 16.2 Contractor Rights Upon Subcontractor Default. If Contractor provides written notice of Default to Subcontractor, Subcontractor must commence to cure the Default within three (3) Days after receipt of the notice, and must continue satisfactory correction of the Default with diligence and promptness. In the event Subcontractor fails to commence and continue to cure the Default as required herein, Contractor, without prejudice to any other rights or remedies it may have, will have the right to exercise any or all of the following remedies: (a) supply labor, materials, and services as Contractor deems advisable for the completion of some or all of the Subcontract Work, and/or (b) contract with one or more other contractors to perform such part of the Subcontract Work as Contractor deems necessary, and charge the cost to Subcontractor; and/or (c) take possession of all tools, materials, appliances, supplies, and equipment on the Project Site belonging to Subcontractor and/or acquired for performing the Subcontract Work; and/or (d) take possession of any of Subcontractor's stored materials acquired or received for performance of the Subcontract Work, wherever such materials

are located; and/or (e) direct the Subcontract to reroute for delivery to the Project Site any materials ordered for the Subcontract Work; and/or (f) suspend or terminate the Subcontract in accordance with the provisions of Article 18 or Article 19; and/or (g) collect all damages and loss, including overhead and attorneys' fees, incurred by Contractor as a result of Subcontractor's Default; and/or (h) withhold any payments due or to become due to Subcontractor in amounts sufficient to cover losses and compel performance to the extent required by the Subcontract Documents; and/or (i) exclude the Subcontractor from the Project Site until the reasons giving rise to the Default have been cured and satisfactory evidence provided to Contractor, and such exclusion shall not be considered a delay or suspension for which Subcontractor is entitled an increase in the Subcontract Amount or extension of the Subcontract Time.

Article 17 Bankruptcy

17.1 If Subcontractor files a petition for relief under the Bankruptcy Code, or an involuntary petition is filed against Subcontractor, and then this Subcontract is rejected, Contractor, in its sole discretion, may terminate this Subcontract. Additionally, in the event of a default by Subcontractor after Subcontractor files a petition for relief under the Bankruptcy Code or an involuntary petition is filed against Subcontractor, Contractor may recoup and/or offset against any sums due or to become due Subcontractor under this Subcontract, and any other contract or agreement with Subcontractor, all costs, including, but not limited to, reasonable overhead, profit, and attorneys' fees, incurred in pursuing all remedies provided in this Subcontract and any other available remedy for the default.

Article 18 Termination or Suspension for Convenience

- 18.1 Suspension or Termination for Convenience. Contractor will have the right at any time, by written notice to Subcontractor, to terminate or suspend this Subcontract without cause for any reason whatsoever. Termination or suspension for convenience may be exercised at the sole discretion of Contractor without prejudice to any other rights of Contractor, the exercise of which need not be reasonable, and regardless of whether Subcontractor is or is not in default. A termination or suspension for the convenience of Contractor will be effective immediately upon Subcontractor's receipt of a written notice from Contractor.
- 18.2 Remedy for Suspension. In the event of a suspension, Subcontractor will notify Contractor in writing in sufficient time to permit timely notice to Owner under the Prime Contract of the effect of the suspension on the Subcontract Work. The Subcontract Amount and/or the Subcontract Time will be adjusted equitably for reasonable increases in the time or cost of performance of the Subcontract Work caused by the suspension, except to the extent that performance would have been suspended by a cause for which Subcontractor would have been responsible. The Subcontract Amount will not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which Subcontractor would have been entitled to only a time extension under this Subcontract. Notwithstanding the forgoing, Subcontractor agrees that in the event Owner suspends the Prime Contract, or any portion of it, Subcontractor expressly waives its right to any compensation beyond the amount received by Contractor from Owner for the Subcontract Work.
- 18.3 Remedy for Termination. In the event this Subcontract is terminated for any reason other than Subcontractor's default, Subcontractor will be entitled to payment in full for all Subcontract Work properly performed through the date of the notice of termination, reasonable termination expenses incurred by Subcontractor or its subcontractors, including the cost and expense of all materials purchased or committed to be purchased by Subcontractor or its subcontractors on or before the date of such termination, or if materials can be returned by Subcontractor, the cost and expense incurred by Subcontractor in connection with such return (including without limitation restocking fees and shipping costs) and all reasonable costs to demobilization incurred by each of Subcontractor and its subcontractors. Subcontractor will not be entitled to recover overhead or profit on Subcontract Work not executed, loss of business, or loss of profits on other projects or projects lost or foregone. Payment of Subcontractor's termination costs will be made within sixty (60) Days after Contractor receives an invoice from Subcontractor for the agreed upon costs. Notwithstanding the forgoing, Subcontractor agrees that in the event Owner terminates the Prime Contract, or any portion of it related to the Subcontract Work, the types and amounts of compensation available to Subcontractor will be as specified in the Prime Contract, and Subcontractor expressly waives its right to any compensation beyond the amount received by Contractor from Owner for the Subcontract Work.
- 18.4 Continuing Obligations. A termination for convenience will not relieve Subcontractor of any responsibility it would otherwise have under the Subcontract to correct Defective Work, or to pay any costs arising from the Subcontract Work. Contractor does not waive any right or claim for damage which it had under the Subcontract prior to termination, and may pursue or continue to pursue any cause of action arising from actions or omissions of Subcontractor before termination.

Article 19 Termination for Default

- 19.1 Termination for Default. If Subcontractor Defaults and fails to cure as provided in Section 16.2, Contractor, at its option, may provide written notice to Subcontractor that the Subcontract is terminated for default.
- 19.2 Completion of Subcontract Work. Upon termination of the Subcontract, if, or to the extent, Contractor has not already done so, Contractor may exercise any or all of the options permitted under Section 16.2.
- 19.3 Conditional Assignment of Sub-subcontracts and Supply Agreements. All sub-subcontracts or supply agreements which Subcontractor enters into to carry out the Subcontract Work will include a provision that the sub-subcontractor or supplier agrees its contract may be assigned to Contractor upon termination of Subcontractor for default. Upon termination of the Subcontract, Contractor will have the right, but not the obligation, to accept assignment of any or all such contracts.
- 19.4 Subcontractor Liability Upon Default. In the event the Subcontract is terminated for Default, Subcontractor will be liable to Contractor for all expenses incurred by Contractor in completing the Subcontract Work, together with any additional costs or damages incurred in connection with any default by Subcontractor, including, but not limited to delay damages, attorneys' fees and costs, and the cost of Contractor's staff employees or consultants (collectively, "**Default Damages**"). Subcontractor will not be entitled to receive any further payment until the Subcontract Work has been fully completed and accepted by Owner. At such time, if the unpaid balance of the Subcontract Amount exceeds the Default Damages, the excess will be paid to Subcontractor. If the unpaid balance of the Subcontract Amount is less than the Default Damages, Subcontractor will pay the difference to Contractor promptly upon receipt of an invoice.
- 19.5 Wrongful Termination. If a termination for Default, or any action taken pursuant to it, is determined to be wrongful, the termination will be deemed to have been a termination for convenience, and Subcontractor's sole remedy will be as provided in Section 18.3 above.

Article 20 Claims and Disputes

- 20.1 Notice of Claim or Dispute. In the event of any dispute, controversy, or claim arising out of or relating to this Subcontract or the Subcontract Work ("**Subcontractor Claim**"), Subcontractor will provide written notice to Contractor within seven (7) Days following the occurrence of the event on which such claim is based, or at least five (5) Days prior to the time required by the Prime Contract, whichever is earlier, and in any event will provide such notice before either performing any work which it may contend is beyond the scope of its obligations and in any event before allowing the conditions leading to the event to be covered or changed. The notice will describe in detail the nature of the claim or dispute. Any claim not timely presented as required in this Section is hereby expressly waived by Subcontractor. Upon request by Contractor, Subcontractor will promptly provide detailed information to support any claim for additional time or compensation.
- 20.2 Continuing Performance. Pending final resolution of a Subcontractor Claim, except as otherwise directed in writing by Contractor or in the event Contractor is in default of its payment obligations herein, Subcontractor must proceed promptly and without interruption with performance of the Subcontract Work and the written orders of Contractor regarding the performance of any disputed work (including a dispute over whether any work is within the scope of the Subcontract Work).
- 20.3 Claims Involving Owner. All Subcontractor Claims, other than claims not involving Owner addressed below in Section 20.6, will be processed and decided in the manner provided for in the Prime Contract. Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Prime Contract, and by any and all preliminary and final decisions or determinations made there under by the person or agency so authorized in the Prime Contract. Contractor will make payments to Subcontractor on account of such claims only to the extent that Contractor is paid for such claims by Owner. Subcontractor hereby waives all rights to recover from Contractor in excess of any sum actually received by Contractor from Owner in regard to Subcontractor Claims, and expressly acknowledges and accepts the risk of nonpayment in the event and to the extent Owner does not pay Contractor for Subcontractor's claims. Payment to Contractor for any Subcontractor Claim will be a condition precedent to Contractor's obligation to pay Subcontractor for that Subcontractor Claim. If the Prime Contract authorizes an appeal from the act or decision of Owner denying any such claim and the time for such appeal has not expired, Contractor, upon written request of Subcontractor, will at its option either prosecute an appeal on behalf of Subcontractor under said contract provision or permit Subcontractor to prosecute an appeal in the name of Contractor, in either case at Subcontractor's sole expense. Notwithstanding the foregoing, Contractor will not be required to submit any claim on behalf of Subcontractor, or permit Subcontractor to prosecute any claim or appeal in Contractor's name if, in Contractor's reasonable judgment, the Subcontractor Claim lacks sufficient justification or documentation, or to do so will subject Contractor to any penalties or other sanctions, or will cause Contractor to violate Laws relating to the presentation of false or inaccurate claims. If the dispute or claim is prosecuted or defended by Contractor, Subcontractor agrees to furnish all certifications, documents, statements, witnesses, and other information required by Contractor, and to pay for, or reimburse Contractor for, all costs, including reasonable attorneys' fees, incurred.

For any Subcontractor Claims involving Owner, Subcontractor agree to submit to the jurisdiction and venue specified in the Prime Contract, and said courts will have exclusive jurisdiction over all disputes between the Parties and involving Owner.

- 20.4 Agreement to Arbitration of Claims Involving Owner and Others. Subcontractor expressly agrees that if Contractor is party to an agreement for arbitration of disputes with Owner or any other person or entity in regard to the Project, then, at the election and upon the demand of Contractor, Subcontractor agrees to participate, by consolidation or joinder or any other means, as a party with Contractor in any arbitration where any aspect of Subcontractor's performance, its rights or liability for work performed, or its right to payment under the Subcontract is in issue, regardless of who originally initiated such proceedings. The procedures provided in the arbitration agreement between Contractor and another party will govern the conduct of such arbitration and the selection of arbitrators. This agreement to arbitrate will be specifically enforceable under the governing law. The award rendered by the arbitrators will be final, and judgment may be entered upon the award by any court having jurisdiction thereof.
- 20.5 Apportionment of Damages. If Contractor becomes liable to Owner for any damages arising out of Subcontractor's failure to perform the Subcontract Work in compliance with the Subcontract Documents, then Contractor will be entitled to recover from Subcontractor its share of such damages based on Subcontractor's proportionate share of fault. Damages will be apportioned among Contractor and Subcontractor as set forth by Owner or in an arbitration award or judgment. If no such apportionment is made, then Contractor will apportion the fault among Contractor and all subcontractors, and the damages will be distributed accordingly, subject to Subcontractor's rights in Section 20.6. In addition to distributing the damages that may be assessed by Owner, Contractor will also assess the damages and expenses directly suffered by Contractor and such damages will be distributed among Contractor and all subcontractors according to the same principle, subject to the dispute resolution provisions of this Article 20..
- 20.6 Dispute Resolution for Claims Not Involving Owner. For any Subcontractor Claim not involving Owner, Subcontractor will be conclusively bound by and will abide by Contractor's decision, which will be final and binding unless Subcontractor provides written notice of a dispute to Contractor within thirty (30) Days of Contractor's decision. The Parties will attempt in good faith to resolve such dispute, and any other controversy or claim arising out of or relating to the Project or the Subcontract or the breach thereof ("**Dispute**") promptly by negotiation between executives who have authority to agree to a settlement of the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Subcontract. Within fifteen (15) Days after a Party provides written notice to the other Party of a Dispute, the executives of both Parties will meet at a mutually acceptable time and place (or, otherwise, at the Project Site), and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. All negotiations pursuant to this subsection are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties do not resolve the Dispute by negotiation within forty-five (45) Days after delivery of the notice of Dispute, they hereby agree that the Dispute will be decided by binding arbitration administered by the American Arbitration Association AAA in accordance with the most current Construction Industry Arbitration Rules ("Rules"), except as follows. The parties will attempt to agree on an arbitrator, failing which the arbitrator will be selected as provided for in the Rules. A single arbitrator will be used for any dispute in which the claim amount is Five Million Dollars (\$5,000,000) or less. The arbitrator(s) shall be attorneys actively practicing in the area of construction law. Discovery shall conclude within 150 days of the appointment of the arbitrator; each party shall be limited to a maximum of five (5) depositions and collection of documents from no more than five (5) custodians per side. Hearings shall be in person. The award shall be made within ten (10) months following the appointment of the arbitrator and the arbitrator shall agree to comply with this schedule before accepting appointment. The arbitrator will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. Any award in an arbitration initiated under this clause shall be limited to monetary damages and shall include no direction to any party other than the direction to pay a monetary amount. The award of the arbitrator(s) shall be accompanied by a reasoned decision. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witnesses. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Subcontractor further agrees that any arbitration arising under this Subcontract may include, at Contractor's sole option, by consolidation or joinder or any other manner, any additional person or entity not a party to the Subcontract reasonably necessary for resolution of the dispute. The foregoing agreement to arbitrate will be specifically enforceable under prevailing law in any court having jurisdiction thereof.
- 20.7 Stay of Certain Actions. If Subcontractor has damages or a claim against Contractor which is only partially related to a claim involving Owner, then any action between Contractor and Subcontractor shall be stayed until the portion involving Owner is finally determined.

- 20.8 Injunctive and Prejudgment Measures. The Parties stipulate and agree that in any dispute under this Subcontract, any arbitrator will have the authority by way of injunctive and/or other prejudgment measures to enter interim and permanent orders, including requiring the posting of liquid security for any debt prior to the hearings on the dispute. The Parties further agree that any security ordered by the arbitrator(s) to be posted will be held in anticipation of the final award and become a part of the final arbitration award issued by the arbitrator(s).
- 20.9 Attorneys' Fees. In the event of any Dispute Contractor, will be entitled to recover its attorneys' fees, other legal fees, expert fees, court costs, arbitrator fees, and all expenses of litigation or arbitration, including the cost for any staff time of Contractor's employees or consultants, incurred in connection with such Dispute.

Article 21 Use of Contractor's Facilities, Equipment, or Safety Measures

- 21.1 Consent Required. Subcontractor will furnish its own storage and office facilities and will not enter or use Contractor's material, vehicles, equipment, gas, electricity, water, or other services, appliances, facilities, safety devices, or personnel without the prior consent of Contractor's superintendent. If such consent is obtained, Subcontractor will pay Contractor's reasonable charges therefore.
- 21.2 Subcontractor Assumption of Risk. In the event Subcontractor or any of its employees, agents, or subcontractors (collectively, "Other Persons") makes use of equipment, vehicles, apparatus, or tools, which may include, but is not limited to, motorized equipment, non-motorized equipment, platforms, barges, boats, generators, light towers, welding machines, ladders, scaffolding, staging, Personal Protective Equipment or gear, small tools, or similar devices which are owned or leased by Contractor (collectively "Equipment"), and/or Contractor's safety devices and/or personnel ("Safety Measures") and which has been furnished by Contractor on a temporary basis for use in the performance of work, it is the intention of the Parties that Subcontractor and Other Persons should enjoy the benefits, economic and otherwise, that arise from the use by them of such Equipment and/or Safety Measures. As consideration for such benefits, and as a condition of such use, Subcontractor agrees to assume all risks of personal injury or death which are incident to such use by Subcontractor or Other Persons.
- 21.3 Subcontractor Obligations. In recognition of Subcontractor's assumption of such risks, Subcontractor will (a) first inspect any Equipment and satisfy itself that the Equipment is appropriate and sufficient for its purposes, (b) provide training in the proper use of the Equipment to any person using it, (c) ensure all persons using the Equipment hold all the applicable licenses and qualifications to use or operate the Equipment, (d) obtain approval from an Alliance Project Manager for any requested use of any crane; and (e) independently evaluate the appropriateness of all Equipment and Safety Measures. Additionally, Subcontractor will return all Equipment in the same condition in which it was received, ordinary wear and tear excepted. In the event of any damage to the Equipment, Subcontractor will repair or replace the Equipment, or will reimburse Contractor for its repair or replacement, at Contractor's option.
- 21.4 **INDEMNIFICATION. IN FURTHERANCE OF THE FOREGOING INTENTIONS, SUBCONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS INDEMNITEES (AS DEFINED IN SECTION 14.1) FROM AND AGAINST ANY AND ALL LOSSES (AS DEFINED IN SECTION 14.1) ARISING OUT OF OR RESULTING FROM ANY INJURY, OR SICKNESS, DISEASE, OR DEATH TO OR OF SUBCONTRACTOR, OTHER PERSONS, OR ANY THIRD PERSONS, OR ANY PROPERTY DAMAGE, CAUSED BY OR RESULTING FROM, IN WHOLE OR IN PART, THE USE, MISUSE, OR FAILURE OF ANY EQUIPMENT AND/OR THE FAILURE OR INADEQUACY OF ANY SAFETY MEASURES. SUBCONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS INCLUDES PAYMENT OF ALL COURT COSTS, ATTORNEYS' FEES, OTHER LEGAL FEES, EXPENSES OF LITIGATION, AND EXPERT FEES INCURRED BY ANY OF THE INDEMNITEES AS A RESULT OF ANY LOSSES. TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANY LAW TO THE CONTRARY, SUBCONTRACTOR WILL BE OBLIGATED TO INDEMNIFY, DEFEND, AND HOLD HARMLESS AS DESCRIBED HEREIN EVEN IF THE INDEMNITEES ARE INDIVIDUALLY OR COLLECTIVELY CONCURRENTLY OR JOINTLY NEGLIGENT OR OTHERWISE AT FAULT, EVEN IF THEIR DEGREE OF FAULT EQUALS OR EXCEEDS SUBCONTRACTOR'S DEGREE OF FAULT, HOWEVER SUBCONTRACTOR WILL HAVE NO OBLIGATION TO INDEMNIFY ANY OF THE INDEMNITEES TO THE EXTENT ANY LOSSES ARE DIRECTLY CAUSED BY THE INTENTIONAL MISCONDUCT OF ONE OR MORE OF THE INDEMNITEES. SUBCONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS SECTION 21.4 WILL NOT BE LIMITED BY APPLICABLE WORKERS' COMPENSATION LAWS, AND, WITH RESPECT TO THIS INDEMNITY, SUBCONTRACTOR HEREBY EXPRESSLY WAIVES ALL IMMUNITIES, DEFENSES, AND CLAIMS IT MAY HAVE UNDER SUCH LAWS.**

Article 22 Miscellaneous Provisions

- 22.1 Flow-Down Terms. These Subcontract terms and conditions are deemed to be incorporated in full into, and made a material part of, any contract, subcontract, purchase order, or other agreement entered into between Subcontractor and any of Subcontractor's subcontractors, vendors, or other persons or entities performing any portion of the Subcontract Work.

Subcontractor agrees that it will specifically incorporate all of the terms of the Subcontract, into any such contract, subcontract, purchase order, or other agreement entered into between Subcontractor and any of Subcontractor's subcontractors, vendors, or other persons or entities performing any portion of the Subcontract Work.

- 22.2 Records; Right to Audit. Subcontractor agrees to keep and maintain records relating to the Subcontract Work, including, without limitation, (a) records to substantiate that all Subcontract Work is in compliance with the Subcontract Documents, (b) certificates evidencing safety testing required by any Law or any applicable industry standard, and (c) copies of any sub-subcontract agreement, purchase order, or other agreement to allow Contractor to verify compliance with the obligations in Section 22.1. During the term of this Subcontract and for a period of three (3) years thereafter, or such longer time as required by the Prime Contract, Contractor, Owner, and/or their designee will have the right to inspect, audit and copy, at any reasonable business time during business hours and upon prior notice, such records relevant to this Subcontract and Subcontractor's compliance with each of its obligations under this Subcontract. In the event an inspection or audit discloses that any invoice or statement was overstated by more than 2%, Contractor shall be entitled upon demand to a refund from Subcontractor of all such amounts plus the cost of the audit.
- 22.3 Entire Agreement. This Subcontract, together with all exhibits and any amendments later made, constitutes a single, integrated written contract expressing the sole and entire agreement between the Parties concerning the subject matter hereof, and no extrinsic evidence may be introduced to reform the Subcontract Documents in any judicial or arbitration proceeding involving the Subcontract Documents. All negotiations, discussions, proposals, acknowledgments, and agreements made prior to the date of this Subcontract, including, without limitation, any disclaimers or limits on liability, are merged herein and superseded by this Subcontract. No covenants, representations, or warranties of any kind, whatsoever, have been made by any Party except as specifically stated in this Subcontract. Except as otherwise provided herein, this Subcontract may not be changed in any way except by written agreement signed by both Parties.
- 22.4 Purchase Orders, Clarifications and Acknowledgement Letters. In the event that Subcontractor issues a purchase order, clarification or other instrument related to this Subcontract, which document is not expressly made a Subcontract Document herein, any terms and conditions set forth in such document which constitute terms and conditions which are in addition to those set forth in this Subcontract, or which establish conflicting terms and conditions to this set forth in this Subcontract, are expressly rejected by Contractor.
- 22.5 Owner Approval of Subcontractor. This Subcontract may be contingent upon Owner's approval of Subcontractor, and materials and products being furnished by Subcontractor. If, within five (5) Days after written notice to Subcontractor of any disapproval by Owner, Subcontractor fails to overcome Owner's objection, Contractor will have the right to cure the problem or terminate the Subcontract for default or convenience, at its option, or, if Owner disapproves of Subcontractor, this Subcontract will be void *ab initio*.
- 22.6 No Subcontractor Assignment. This Subcontract shall not be assigned, sublet, or transferred by Subcontractor, in whole or in part, without Contractor's written consent, which consent may be contingent on reasonable conditions. Any purported assignment, subcontract, or transfer without Contractor's written consent will be void and of no effect. It is further agreed that Subcontractor will not assign any monies due or to become due under this Subcontract without the written consent of Contractor. Subcontractor will furnish in writing to Contractor the names of persons or entities (including those who are to furnish materials or equipment) proposed for each principal portion of the Subcontract Work. Contractor will promptly reply to Subcontractor in writing stating any reasonable objection to any such proposed person or entity. Subcontractor will not contract with a proposed person or entity to whom Contractor has a reasonable objection. Subcontractor will not change a sub-subcontractor or vendor previously selected without Contractor's prior approval.
- 22.7 No Separate Agreements with Owner. Subcontractor will not enter into any agreements with Owner or Architect/Engineer related to the Project without the prior written consent of Contractor.
- 22.8 Contingent Assignment. Subcontractor agrees to the contingent assignment of this Subcontract to Owner or Owner's assignees, as provided in the Prime Contract. Such assignment is effective when Owner has terminated the Prime Contract for cause and has accepted the assignment by notifying Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under Contractor's bond, if any. Subcontractor consents in advance to such assignment and agrees to be bound to the assignee by the terms of this Subcontract.
- 22.9 Governing Law. If the Prime Contract expressly specifies the applicable law then the Subcontract will be construed and enforced in accordance with the law specified in the Prime Contract. In the event the Prime Contract does not specify the governing law, to the fullest extent allowed by law, all terms and conditions of this Subcontract will be construed and enforced according to the laws of the state of Texas.
- 22.10 Non-Waiver. No term or condition of this Subcontract may be waived by Contractor except in writing signed by its duly authorized officer or agent. The failure of Contractor to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Subcontract, or to exercise any right herein, will not be construed as a waiver or relinquishment of that term, covenant, condition, or right with respect to further performance, and Contractor specifically

reserves the right to insist upon or enforce any provision at any time, regardless of any prior course of dealing. Any express waiver of any provisions of this Subcontract will not be deemed a waiver of any of the other terms and conditions. None of the remedies provided in the Subcontract to Contractor are intended to be exclusive, and Contractor expressly reserves the right to exercise any other remedies provided by law.

- 22.11 Non Hire. Unless mutually agreed otherwise, during the term of this Subcontract and for a period of twelve months following the termination or completion of this Subcontract, neither Subcontractor nor Contractor will, either directly or indirectly hire or solicit or encourage any present employee of the other to leave the employment of that company; provided, however, that nothing in this Subcontract shall prohibit (i) any general advertisement or general solicitation that is not specifically targeted at such persons (or the hiring of any employee of either party as a result thereof); or (ii) the hiring of any such persons who initiate discussions with such party regarding employment without any direct or indirect solicitation by such party.
- 22.12 No Publicity. Subcontractor will not make any public disclosures regarding Owner, Contractor, or the Project, including, without limitation, in any advertisements, publications, or documents, without the prior written approval of Contractor.
- 22.13 Confidential Information. All data relating to Contractor's or Owner's business or the Project which is acquired by Subcontractor through Contractor and/or Owner ("**Confidential Information**"), pursuant to this Subcontract, will be safeguarded by Subcontractor as required by the Prime Contract, and in any event, at least to the extent that Subcontractor safeguards data relating to its own business. Subcontractor may use the Confidential Information only for purposes of performing under this Subcontract. Unauthorized disclosure, communication, or use of Confidential Information by Subcontractor may cause irreparable harm and result in significant commercial damages to Owner or Contractor, and such harm and damages may be difficult to ascertain. Therefore, in the event of any breach or threatened breach of this confidentiality obligation by Subcontractor, Contractor has the right, without the posting of a bond or other security, to equitable relief, including specific performance and temporary, preliminary, and permanent injunctive relief, in addition to any other remedies that may be available to Contractor or its Affiliates at law or in equity. Subcontractor will include the provisions of this Section 22.13 in its subcontracts.
- 22.14 Right of Recoupment or Offset. Subcontractor authorizes Contractor to recoup or offset against amounts otherwise due and owing to Subcontractor under the Subcontract any and all amounts due to Contractor from Subcontractor, regardless of the origin of such obligations.
- 22.15 Notices. Any notices or other communications required or permitted to be given pursuant to this Subcontract shall be in writing and directed as follows: if to Contractor: Alliance Engineers & Project Consultants LLC, Attn: Chris Barnes, 470 Orleans Street, Suite No. 1200, Beaumont, Texas 77701 and by email at Chris.Barnes@AllianceEPC.com; if to Subcontractor, send to the address that appears on the accompanying Subcontract Purchase Order; or to such changed address as a party hereto shall designate to the other party from time to time in writing. Notices shall be (i) personally delivered (including delivery by Federal Express, United Parcel Service or other comparable nation-wide overnight courier service) to the address set forth above, in which case it shall be deemed delivered on the date of delivery; (ii) sent by certified mail, return receipt requested, in which case it shall be deemed delivered on the date shown on the return receipt unless delivery is refused or delayed by the addressee, in which case it shall be deemed delivered on the third day after the date of deposit in the U.S. Mail; (iii) by facsimile (with retained receipt), in which case it shall be deemed delivered on the first day thereafter or (iv) scanned and emailed, in which case it shall be deemed delivered on the first business day thereafter.
- 22.16 Conclusiveness of Contractor Communications. If Subcontractor fails to object in writing to a notice of default, notice of termination, withholding of payment, or other communication from Contractor within three (3) Days from the date of the communication, then Subcontractor's agreement to all matters stated in the communication will be conclusively established.
- 22.17 Interpretation. This Subcontract has been negotiated at arms' length between Parties who are experienced and knowledgeable in the matters contained in this Subcontract, and the Parties hereby agree that any statute, law, or common law principles or other authority that would require interpretation of any ambiguities in this Subcontract against the Party who has drafted it are not applicable and are hereby waived.
- 22.18 Subheadings. Subheadings, captions, and titles in this Subcontract are for convenience only and will not be used to interpret the meaning of the content of the provisions.
- 22.19 Severability. In the event any provision in the Subcontract Documents is found to be legally invalid or unenforceable, that provision will be revised to the degree allowed by law to give it the maximum effect allowed by law, or, if revision is not possible, will be severed and the remaining provisions of this Subcontract will remain in full force and effect.
- 22.20 Survival. All provisions of this Subcontract which by their nature are intended to survive after its termination will remain in force after any termination or expiration of this Subcontract including, but not limited to, those addressing the following subjects: Representations; Subcontract Amount, Payment Conditions; Warranty; Indemnification; Confidential Information; Insurance; Severability; Notices; Advertising; Survival; Claims and Disputes; Applicable Law; and Interpretation.

- 22.21 Electronic Signature. Each Party understands and agrees that electronic signatures (where utilized), whether digital or encrypted, used by the Parties included in this Subcontract, as well as any Change Orders, Applications for Payment, and Lien Waivers, are intended to have the same force and effect as manual signatures.
- 22.22 Authority to Sign. The person executing this Subcontract on behalf of each Party warrants their authority to bind the Party to this Subcontract, and each Party will provide evidence of such authority upon request by the other.
- 22.23 Provisions Incorporated. Each and every provision of law and clause required by law to be inserted in this Subcontract will be deemed to be inserted herein and, if through mistake or otherwise, any such provision is not inserted, or was not correctly inserted, then upon the application of either party, the Subcontract will forthwith be physically amended to make such insertion.
- 22.24 Information Security. Subcontractor represents that it will comply with any requirements in the Prime Contract and, at a minimum, will make reasonable efforts to prevent any compromise of its information systems, computer networks, data files, and applications (“**Systems**”) by unauthorized users, viruses, or malicious computer programs which could in turn be propagated via computer network, e-mail, magnetic media, or otherwise to Contractor. Appropriate internal information security practices, include, without limitation, using appropriate firewall and anti-virus software, maintaining counter measures, operating systems, and other applications with up to date virus definitions and security patches, installing and operating security mechanisms in the manner in which they were intended, and permitting only authorized user access to Systems. Subcontractor agrees to immediately notify Contractor in writing if the security of its Systems are breached or compromised in any way.



BOTH PARTIES HAVE READ AND UNDERSTOOD THIS SUBCONTRACT. THIS SUBCONTRACT IS NOT BINDING ON CONTRACTOR UNTIL THE ACCOMPANYING SUBCONTRACT PURCHASE ORDER IS ACCEPTED AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.

IN WITNESS WHEREOF, the Parties hereto have caused this Subcontract and the accompanying Subcontract Purchase Order to be executed by their fully-authorized representatives as of the date on the Subcontract Purchase Order, and by so executing have agreed to be bound by this Subcontract.

CONTRACTOR COMPANY NAME: **Alliance Engineers & Project Consultants, LLC**

By: _____

Name: _____

Title: _____

Date: _____

SUBCONTRACTOR COMPANY NAME: _____

By: _____

Name: _____

Title: _____

Date: _____

END OF DOCUMENT