

## **STANDARD TERMS AND CONDITIONS**

***These Standard Terms and Conditions apply to any Proposal and resulting Subcontract and/or Agreement relating to equipment, services (including design and installation), construction, or materials provided by VT Milcom Inc. ("VT Milcom").***

### **DEFINITIONS:**

Seller or Subcontractor shall mean VT Milcom, the party to whom the order for purchase, construction or services to be performed has been given.

Client or Contractor shall mean the party or organization soliciting the work and/or placing the order, such as the Owner or Prime Contractor. Goods or Services shall mean the product or service for which the seller has placed an order with the client.

Services or Construction shall mean that work or task which the subcontractor has agreed to perform for a Client or Contractor.

Agreement or Subcontract shall mean the cover document, proposal, purchase order, contract, subcontract, or any other document written or issued that specifically refers this Subcontract Terms and Conditions, amendments, exhibits, attachments or other such documents identified as part of this Subcontract, all of which are incorporated herein by reference, which shall govern the performance of the Subcontractor.

Party(ies) shall mean the Contractor and Subcontractor (singularly or collectively), or Client and Seller (singularly or collectively).

**GENERAL PROVISIONS** – The Subcontract governs the sale by Subcontractor of equipment, services (including design and installation), construction, or materials and any associated proprietary programs and related information included with the equipment at the time of sale and listed on the face of the Subcontract to Contractor. This Subcontract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. Subcontractor objects to and rejects additional or different provisions that may appear in any document furnished by Contractor unless such provision is expressly agreed to in writing and signed by Subcontractor. Subcontractor's acceptance of or payment for material shipped or services performed shall constitute acceptance of such material or service subject to the provisions herein only, and shall not constitute acceptance of any counter proposal submitted by Contractor not otherwise accepted in writing and signed by Subcontractor. Subcontractor's Proposals, including all clarifications and assumptions, are hereby incorporated by reference with the same force and effect as if they were given in full text. If there is a conflict between any terms & conditions set forth in the Subcontract, Agreement, Purchase Order, Statement of Requirements, Statement of Work and the Proposal referenced herein, the Proposal assumptions and clarifications shall take precedence. The headings used in this Subcontract are for the convenience of the Parties and shall not define, limit, or describe the scope or the intent of the provisions of this Subcontract.

**TERMS AND CONDITIONS OF PROPOSAL** – Proposals are valid for sixty (60) calendar days from date of submission, unless otherwise required by solicitation.

A mutually agreeable, bilaterally executed contract or purchase order shall be required prior to the start of any Work. The Notice to Proceed or Letter Subcontract included in the Proposal can be submitted by the Contractor to initiate work if signed and returned as indicated in the Proposal documents.

The Proposal document and all Terms and Conditions contained within, including any assumptions and exceptions, shall be incorporated in its entirety into any resultant contract or purchase order issued for the project.

Subcontractor will require a minimum three (3) week lead time for materials following receipt and acceptance of a mutually agreed upon contract or purchase order, unless otherwise specified in the Proposal.

**SCHEDULING** – Pricing is based upon a single mobilization and demobilization of the installation crew. The costs of any additional mobilization and de-mobilization of installation crews due to schedule changes outside the control of the Subcontractor shall be borne by the Contractor. Any compression or acceleration of the schedule resulting in additional costs to complete shall require an equitable adjustment to the contract price and a written modification of the original contract. The costs of any schedule delays, modifications or slippage outside the control of the Subcontractor shall require an equitable adjustment to the contract price and a written modification of the contract.

**SCOPE OF PERFORMANCE** – Subcontractor shall furnish all services and products, including labor, materials, other items and facilities necessary to perform the Work in accordance with the requirements set forth in this Subcontract, including, but not limited to, the Statement and Schedule of Work, and any Task Order ("Order") issued pursuant to this Subcontract.

**DELIVERY/TASK ORDERS** – All Delivery/Task Orders issued hereunder are subject to the Terms and Conditions of this Subcontract. The Delivery/Task Order type will be based on the degree, scope, and timing of the responsibility assumed by Subcontractor for the costs of performance. Failure to comply with the schedule, including delays with its suppliers but excluding Force Majeure delays, may constitute a material breach of the Subcontract and/or Delivery/Task Order and could result in Contractor exercising its contractual rights, including termination. If delays occur, the delaying party shall notify the other party in order to mutually agree on an appropriate course of action.

Subcontractor will provide to Contractor sufficient documentation as may be required to establish a fair and reasonable basis for the amount(s) proposed. Contractor and Subcontractor will negotiate and establish the total amount for each Delivery/Task Order issued under this Subcontract. Subcontractor shall provide all necessary supplies and services to accomplish the requirements of the Statement of Work incorporated in each Delivery/Task Order. Contractor will pay Subcontractor as specified in individual Delivery/Task Orders for work authorized under the Delivery/Task Orders.

**DATES** – This Subcontract shall be binding and deemed effective when executed by both parties whose signature is provided for on the signature pages hereof (the "Effective Date").

All dates are intended to be calendar dates throughout this Subcontract unless otherwise specified. The Period of Performance, providing mobilization and demobilization dates, final submittal due dates, etc., will be clearly defined in each applicable Subcontract.

**ELECTRONIC CONTRACTING** - The Parties agree that if this Subcontract is transmitted electronically, neither Party shall contest the validity of this Subcontract or any acknowledgement thereof on the basis that this Subcontract or acknowledgement contains an electronic signature.

**ACCEPTANCE OF MATERIAL/SERVICE** – Acceptance of Material occurs (1) at the time Material is delivered to and received for the location shown on the Order; and (2) Contractor has had a reasonable opportunity to inspect Material for conformance with the terms of the Subcontract, acceptance of which shall not be more than thirty (30) days from receipt. Materials will not be accepted if either the Contractor or Owner finds that the material or materials are not in conformance with the terms of the Subcontract. Acceptance shall not be deemed to cover manufacturer defects which were not obvious at the time of inspection. In no event shall Contractor be liable to Subcontractor for consequential damages resulting from any defects or deficiencies identified in accepted items. Acceptance of Services occurs after the service has been successfully performed, tested, and signed off by an authorized Subcontractor

employee who has been appointed such authority, which shall not be more than fifteen (15) days from service completion.

**WARRANTY** – Subcontractor warrants that Subcontractor and its employees shall, in performing Work hereunder, exercise the degree of skill, care and diligence consistent with best commercial practices. Subcontractor shall perform Work in a good and workmanlike manner and in compliance with any and all requirements specified in the Statement and Schedule of Work or otherwise provided by Contractor. Subcontractor also warrants that any products, material or equipment supplied by Subcontractor are merchantable and comply with any and all requirements identified or provided by Contractor. Subcontractor shall provide products, material and equipment that are free from defects, whether patent or latent, in design, material and workmanship, and are suitable for the particular use for which the items are purchased.

Subcontractor further warrants that all products, material and equipment are free and clear of all liens and encumbrances, and that Subcontractor has secured for Contractor the unrestricted right to own, sell or use such items. Subcontractor shall transfer all manufacturer or vendor warranties associated with all products, material, equipment and any other goods supplied to Contractor and/or such entity as designated by Contractor. For purposes of this Subcontract, products, material or equipment supplied by Subcontractor shall include any documentation, such as quality control or test records or certificates of compliance that may be specified or are customarily furnished in the trade.

Subcontractor, without cost to Contractor, shall promptly do all things necessary to correct any breach of the above warranties in a manner satisfactory to Contractor. If Subcontractor is unable or refuses to repair or replace any defective item or nonconforming goods, as Contractor may require, then Contractor may, by contract or otherwise, repair or replace such defective item or nonconforming goods and back-charge Subcontractor for the excess cost. Contractor may, at its sole option, elect to retain nonconforming goods, in which event an equitable adjustment shall be made in the price thereof.

This warranty supersedes any lesser warranty, whether stated or implied, which may be contained in proposals, confirmations, or other documentation delivered to Contractor by Subcontractor following the issuance of this Subcontract, regardless of whether the same may be accepted or otherwise approved by Contractor, unless a lesser warranty is specifically identified and agreed to in writing as part of this Subcontract.

Material warranty is provided by component manufacturers and is effective upon receipt by the Contractor. Subcontractor shall provide one year labor warranty for the repair or replacement of materials due to manufacture defect or system failure resulting from this installation.

Subcontractor shall have no liability under warranty for goods that have been abused, repaired, or misused by Contractor or third parties.

**INSPECTION/ACCEPTANCE** – Subcontractor shall only tender for acceptance those items that conform to the requirements of this Subcontract. Contractor and its client reserve the right to inspect or test, at the final destination, any supplies or services that have been tendered for acceptance. Contractor may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase to the Subcontract price.

Contractor must exercise its post-acceptance rights (i) within a reasonable time after the defect was discovered or should have been discovered, and (ii) before any substantial change occurs in the condition of the item, unless the change is due to a defect in the item.

**LIMITATION OF LIABILITY** – Subcontractor will not be responsible to Contractor for consequential, exemplary or incidental damages (such as loss of profit or employee's time) regardless of the reason. In no event shall the liability and/or obligations of Subcontractor under the Subcontract or arising out of the purchase, installation, construction

and/or use of the equipment by Contractor or others exceed the price of the equipment.

**INSTALLATION AND SERVICE** – Subcontractor will install equipment and provide any remedial and preventive maintenance which is required to keep the equipment in good operating condition during the warranty period, unless otherwise provided for in the Subcontract. Installation and any remedial and preventive maintenance will be performed by Subcontractor or its authorized designee during normal business hours, unless different hours have been mutually agreed upon in advance and designated within the Subcontract.

**SERVICES PERFORMED ON-SITE** – Upon entry onto Contractor's or Customer's premises, Subcontractor shall comply with all policies, procedures, rules and regulations applicable to such premises, if such information has been provided to the Subcontractor in writing in advance.

The Contractor shall provide storage and protection for Subcontractor's materials or supplies that are on the Contractor or Customer's premises for the performance and execution of the Work. The Contractor shall authorize and approve the areas upon which the operations of the Subcontractor's Work shall be permitted. The Contractor shall be liable for any damages caused, or theft or removal of, Subcontractor's property while on the Contractor's premises. Such damages shall be promptly settled in an amount agreed upon by both Parties. This provision shall not otherwise affect the performance of services under this Subcontract.

Upon delivery of the services, Subcontractor shall leave the premises clean and free of all tools, equipment, waste materials and rubbish, which are exclusive to the responsibilities of the Subcontractor's work only and not related to any other party's work. Contractor shall provide Subcontractor written notice of Subcontractor's failure to comply with its obligation to keep its work areas clean and free of waste material at least forty eight (48) hours prior to the time when Contractor performed cleanup work for the Subcontractor.

**INSURANCE** – Insurance coverage shall be maintained in accordance with Contractor's Insurance Requirements, incorporated herein by reference. Within a specified number of business days following the execution of this Subcontract, Subcontractor shall furnish to Contractor an acceptable Certificate of Insurance evidencing compliance with Contractor's requirements. Subcontractor shall maintain copies of all such policies and, upon request, shall also provide copies of insurance policies to Contractor for review within ten (10) days of commencement of Work. Any insurance coverage required beyond the insurance included in this Subcontract shall be identified in advance by the Contractor prior to the Subcontractor submitting cost and pricing. Subcontractor is required to provide 30-days written notice of any change in or cancellation to its insurance coverage or that of any approved lower tier subcontractor. If Subcontractor fails to provide or maintain the required insurance, or if the insurance carrier fails, for whatever reason, to honor any claims made against the insurance, Subcontractor shall be fully and individually liable for any such claims.

Prior to commencement of work, Subcontractor shall disclose any disputes or litigation with its present insurance carrier(s). If, in the opinion of Contractor, any such dispute or litigation is potentially harmful to the Work, or to the protection of Contractor or its client, Contractor has the right to terminate this Subcontract.

**PAYMENT** – Unless otherwise specified in the Subcontract, payment terms shall be Net 30 upon receipt of invoice. The preferred payment types are check, electronic funds transfer (EFT) or money order. If payment is made via credit card, a nominal fee will be added to the total invoice. When returning disapproved or adjusted invoice for payment, Contractor shall give written notice to Subcontractor, identifying the specific reasons to Subcontractor for correction and re-submittal, without loss of discount privileges, within five (5) business days of Subcontractor's submittal to Contractor; otherwise, invoice shall be considered accepted. Subcontractor shall have a right to recoup or setoff, as the case may be, against payments due or at issue under this Contract

or any other contract between the Parties. Any disputed amounts on an invoice are to be short paid. Authorized Representatives of both Parties shall work together to resolve such discrepancies, with a resolution effected within thirty (30) calendar days. In the event of nonpayment from the Owner is solely due to negligence of the Contractor, Subcontractor shall be entitled to receive payment for work performed.

**INVOICING** – Unless otherwise specified in the Subcontract, Subcontractor shall submit invoices only for conforming items, material, or goods actually delivered or for conforming services actually performed which are accepted by Contractor. Invoices shall comply with invoicing instructions in the Subcontract. At a minimum, each invoice shall include a unique identifying number; date; the Subcontract number; Subcontract item number; item description; part number (if applicable); and any applicable U.S. sales tax to be collected which shall not be broken out separately but inclusive.

**BONDS** – If instructed by Contractor in writing, whether before commencement of Services or at any time prior to completion and acceptance of Services, Subcontractor shall provide a Performance Bond and a Payment Bond in form and with corporate surety satisfactory to Contractor. Any surety furnishing a bond hereunder shall be bound by the terms of the Subcontract. Contractor will separately reimburse Subcontractor the premium cost thereof set forth in the Subcontract terms unless otherwise expressly provided. Contractor may terminate this Subcontract for default or exercise the rights provided in the TERMINATION clause of the Terms and Conditions if Subcontractor should fail to provide such bond when requested.

**MATERIALS COSTS** – Authorized material and other direct costs will be reimbursed on an actual cost basis in accordance with generally accepted principles applied and allowable fees.

**TRAVEL REQUIREMENTS** – Subcontractor personnel may be required to travel in order to provide the services and support required under this Subcontract. Travel shall be proposed and billed on a cost reimbursement basis and shall not exceed the ceiling dollar amounts specified unless other directions are provided in Delivery/Task Order's issued pursuant to this Subcontract. All travel shall be proposed in accordance with the Joint Travel Regulations (JTR) applying Subcontractor's normal accounting practices and procedures. Subcontractor may propose applicable indirect cost elements that apply to travel expense such as general and administrative (G&A) costs on travel, if in accordance with Contractor's accounting system. Applicable indirect costs shall be included in Subcontractor's quote as a fixed price amount that is restricted by the travel ceiling for the period of performance. Subcontractor's failure to identify additional indirect cost elements shall result in those costs being deemed as mutually agreed upon as unallowable during the performance of the Delivery/Task Order. Travel not originally proposed in Subcontractor's quote, travel to a different site, and overseas travel must be approved in advance by the Contractor Task Manager and incorporated into the Statement of Work by a modification to the Delivery/Task Order and mutually signed by both Parties prior to the travel being executed.

**OTHER DIRECT COST (ODC)** – Travel ODC is covered above. Any other ODC authorized within a Delivery/Task Order and issued pursuant to this Subcontract shall be included and identified in Subcontractor's quote. Subcontractor's failure to identify additional indirect cost elements shall result in those costs being deemed as mutually agreed upon as unallowable during the performance of the Delivery/Task Order, unless mutually agreed to in writing by both Parties.

**FORCE MAJEURE** – Neither Party will be liable to the other for delays in performing any obligations under the Subcontract due to circumstances beyond its reasonable control, including but not limited to revolts, insurrections, riots, wars, acts of enemies, national emergency, strikes, floods, earthquake, embargo, inability to secure materials or transportation, and acts of God, and other events beyond the reasonable control of the parties caused by nature or governmental authorities. Should any Force Majeure circumstance cause Subcontractor to incur

additional costs and/or affect any due dates, an equitable adjustment via modification shall be negotiated between the parties and upon mutual Subcontract, bilaterally executed by the Authorized Representatives listed herein. The Contractor shall make every effort to obtain a stop work notice for Force Majeure events, which will flow-down to the Subcontractor.

**SEVERABILITY** – This Subcontract shall be governed by the laws of the State of New York. All sections and subsections of this Subcontract are severable, and the unenforceability or invalidity of any of the sections or subsections of this Subcontract shall not affect the validity or enforceability of the remaining sections or subsections of this Subcontract, but such remaining sections or subsections shall be interpreted and construed in such a manner as to carry out full intention of the Parties.

**DISPUTE RESOLUTION** – Contractor and Subcontractor shall endeavor to resolve any controversy, claim or dispute arising out of or relating to the Subcontract by negotiation. Any claim that is not resolved by negotiation within thirty (30) days of notification or such other period to which the Parties agree shall be settled by arbitration administered by the American Arbitration Association (AAA) under its Commercial (or Construction, if applicable) Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The hearing locale will be held in the AAA's New York Headquarters in New York City. Each Party shall bear its own expenses and an equal share of the expenses of the arbitrator and the fees of the arbitration; provided, however, the arbitrator may award a Party's expenses related to the arbitration to the prevailing Party. Pending any decision or settlement of any dispute arising under this Subcontract, Subcontractor and the Contractor shall proceed diligently with the performance of this Subcontract. **Each Party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with this Subcontract.**

**LOWER-TIER CLAIMS** – Subcontractor shall remove or cause to be removed any and all liens, bond claims or retainage claims of lower-tier Subcontractors, suppliers, or laborers before any action is brought to enforce the same, or within ten (10) days after written demand by Contractor, whichever occurs first. Subcontractor agrees to indemnify, defend and hold Contractor, Contractor's surety, Owner and the Project free and harmless of all liability for any and all such liens or claims, together with reasonable attorney fees and costs and expenses related thereto.

**KEY PERSONNEL** – Key Personnel are defined as those Subcontractor personnel who are recognized and agreed upon by Contractor and Subcontractor as being essential to the successful completion and execution of the respective Task/Delivery Order. If required, the identities and responsibilities of Key Personnel are to be specified on a Task/Delivery Order basis.

Key Personnel shall not be voluntarily removed by Subcontractor from this Subcontract without the prior written consent of Contractor. In the event of an involuntary removal (e.g., resignation or termination for cause or at the request of Contractor or the Government), Subcontractor will use reasonable efforts to replace such Key Personnel within ten (10) days of removal. If Subcontractor reasonably determines and provides written notification to Contractor, prior to the expiration of this ten (10) day period that, due to the difficulty in obtaining equivalent subject matter expertise, it will take longer than ten (10) days to find a suitable replacement, Contractor will provide a reasonable extension. Such written notification shall include a detailed description of the specific actions previously taken and planned to be taken by Subcontractor to locate a suitable replacement. The length of any such extension is within Contractor's sole discretion. If the Task/Delivery Order is performed by Subcontractor on a Firm Fixed Price basis, the failure to replace such Key Personnel shall not be subject to a claim of default or termination so long as Subcontractor exercises reasonable efforts to find the replacement and

continues to meet the requirements of the Task/Delivery Order. Any substitution of Key Personnel shall be made only with persons of equal or greater experience and qualifications of the person being replaced applicable to and required for the timely and accurate performance of the Task/Delivery Order and is subject to the prior written approval of the Contractor, approval of which shall not be unreasonably withheld or delayed.

**COMPLIANCE** – Both Parties shall fully comply with federal, state, and local laws, ordinances, statutes, rules, regulations, license and permit conditions or requirements (collectively “Laws”), including but not limited to all Laws pertaining to employment, health and safety, and any and all other Laws applicable to the Party’s performance of this Subcontract. Each Party shall be liable for all fees and charges assessed against it in connection with the assessed Party’s lack of compliance or failure to comply with applicable laws.

**SAFETY AND HEALTH REQUIREMENTS** - Goods and services provided shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all applicable state and local safety and health requirements, including those of the State Worker’s Compensation Division. See <https://www.osha.gov/>.

**CUSTOMER INTERFACE** – Contractor shall be the primary and exclusive interface with the Customer and Contractor’s other Subcontractors concerning the Prime Contract and all Task/Delivery Orders issued hereunder. However, if it becomes necessary for the Subcontractor to interact directly with the Customer concerning the Prime Contract or any Task/Delivery Order(s) issued hereunder, such contact must be approved in advance and in writing by Contractor. Subcontractor shall immediately report to Contractor if Subcontractor or Subcontractor employees are contacted directly by the Customer. Subcontractor shall ensure the reasonable availability of the requisite personnel to support Contractor in briefings, presentations, negotiations and/or discussions with Customer personnel throughout the term of this Subcontract and/or any Task/Delivery Order(s) issued hereunder. Nothing herein shall be construed to restrict the discussion of day-to-day operational issues. This clause does not prohibit Subcontractor from communicating with the U.S. Government with respect to (1) matters Subcontractor is required by law or federal regulation to communicate to the Government, (2) fraud, waste, or abuse communicated to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information, (3) any matter for which this Contract provides for direct communication by Subcontractor to the Government, or (4) any material matter pertaining to payment or utilization.

**SOLICITATION OF EMPLOYEES** – During the term of this Subcontract and for a period of six (6) months thereafter, each Party agrees that neither Party shall solicit or hire employees of the other Party. It shall not be a breach of this provision if employees of either Party hire said other who responds to an employment advertisement in the general media. This provision does not prohibit the placement of help wanted advertisements in newspapers or other trade publications, but the hiring Party shall bear the responsibility for proof of compliance, if requested.

**PUBLICITY** – Subcontractor shall not make news releases, publicize or issue advertising pertaining to this Subcontract without first obtaining the written approval of the Contractor. Subcontractor reserves the right to use this Subcontract as past performance in future proposals or from marketing said program in order to bring work to same. Such action shall give due credit to the contributions of the Parties.

**ASSIGNMENT** – Neither this Subcontract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor except as expressly authorized in writing by the Subcontractor, which shall not be unreasonably withheld. Either Party reserves the right to assign this Subcontract to any affiliated company or a successor in interest.

**SUBCONTRACTING LOWER-TIER SUBCONTRACTOR** – Subcontractor shall obtain Contractor’s written consent, which Contractor

may withhold in its sole discretion, which shall not be unreasonably withheld. At Contractor’s request, Subcontractor shall provide information regarding the lower-tier subcontractors’ qualifications and a listing of the lower-tier subcontractors’ key personnel. All subcontractors and their representatives and employees must sign a Non-Disclosure Subcontract containing terms substantially to those set forth in the Non-Disclosure Subcontract between the parties as a condition of becoming an authorized lower-tier subcontractor. Subcontractor shall indemnify Contractor for the actions or omissions of its subcontractors under the terms and conditions specified in the INDEMNIFICATION provision.

**MANDATORY WAGES** – If applicable to this Subcontract, the appropriate wage report must be presented to Subcontractor and made a part herein.

**LIQUIDATED DAMAGES** – For the purpose of calculating liquidated damages (if applicable to this Subcontract), liquidated damages will be prorated among all parties responsible for the unauthorized delay or other circumstance, except for a Force Majeure event, weather downtime, and/or any time spent or lost on additional work or standby.

**PERFORMANCE** – Performance shall be made by all Parties in accordance with the terms of the Subcontract. All Parties to this Subcontract will commence and thereafter prosecute the work so as not to cause any delays or interference with the completion of the performance under the Subcontract or in the obtaining of payments or in the final acceptance of the work. Each Party assumes full liability for any and all damages, death or injury of any kind to all person(s), whether employees or otherwise, and property arising out of or in any way connected with its work and shall to the extent permitted by law, defend, indemnify and hold harmless the other, including its officers, agents, employees, and indemnify from and against any and all claims, losses, suits, legal fees and cost of defense, damages, legal and otherwise, arising out of or in any way connected with its Work. For the purpose of this provision, Subcontractor’s liability and indemnification obligation for its “Work” shall include work performed by Subcontractor or Subcontractor’s employees and work performed by vendor, lower-tier subcontractors, or other subcontractors to Subcontractor. Each party shall indemnify and hold the other Party harmless for any violation by its owners, employees, or subcontractors of any federal, state, or local laws, regulations, ordinances, Orders, actions, policies or common laws (including fines, costs and reasonable attorney’s fees) and shall indemnify for any fines, damages, or expenses of any kind (including attorney’s fees and environmental response costs) incurred by reason of such violations by its owners, employees, agents, or subcontractors.

Notwithstanding any other provision of this Subcontract, and except for bodily injury or death caused by gross negligence, willful misconduct, and/or an intentional act of or caused by a Party in whole or in part, in no event shall either party hereto be liable to the other Party hereto for special, consequential or indirect damages that are claimed to be incurred by the other party whether such claim arises under contract, tort (including strict liability), or other theory of law. This limitation does not apply to damages resulting from termination of this Subcontract due to default of either Party. Notwithstanding the foregoing, the amount of damages recoverable against a party and any of its affiliates for any claim will not exceed, in the aggregate, the amount paid or owed for the specific item of product or service giving rise to such damages. The essential purpose of this provision is to limit the potential liability of the Parties arising out of this Subcontract, except for damages imposed by the Government, to the extent that such damages are caused by the subcontractor’s work, either partially or fully, with damages prorated accordingly.

**GOVERNING LAW** – Disputes between the parties to this Subcontract shall be governed and construed in accordance with the laws of the State of New York, choice of law provisions excepted, except as otherwise provided herein with respect to provisions of the Prime Contract, Government clauses, laws and federal regulations incorporated by reference.

Each Party irrevocably and unconditionally submits that any legal proceedings brought pursuant to the terms of this Subcontract, except as to proceedings brought against the Government, including without limitation any Court proceedings or Arbitrations allowed or required hereunder, shall be brought and tried or heard in the State of New York before a tribunal, court, panel or arbitrator sitting in the New York City area. **The parties agree to and accept this mandatory venue provision and its geographical limitations unless otherwise mutually agreed upon with respect to the location where work is being performed.**

Any provision hereof which is held invalid or unenforceable shall not affect the validity or enforceability of any other provision(s) hereof. In the event that any provision of this Subcontract is held invalid or unenforceable, the parties shall make every effort to mutually agree to and incorporate into the Subcontract by Subcontract modification, a new provision in regard to the same subject.

**AUTHORIZED REPRESENTATIVE** – The Authorized Representatives for the Parties to this Subcontract are \_\_\_\_\_ for \_\_\_\_\_ and the Director of Contracts (or assignee) for Subcontractor (VT Milcom). Only the Authorized Representatives, or Officer of the corporation, has signature authority for this Subcontract and any modifications to same, which shall be made in writing and bilaterally executed.

**NOTICES** – All Notices shall be in writing and sent to the Designated Representative by certified mail return receipt requested postage prepaid, email or by facsimile, effective upon the date of receipt. Notice is effective only if the Party giving the Notice has complied with the requirements of this provision and upon receipt of the receiving Party.

**TERMINATION** – If the subcontracted work is stopped for thirty (30) calendar days or more because Subcontractor has not received payments (including progress payments) as required and agreed upon, or has been abandoned or suspended for an unreasonable period of time not due to the fault nor neglect of Subcontractor, then Subcontractor may terminate this Subcontract upon giving the other Party (Contractor or Owner as applicable) seven (7) calendar days written notice. Upon such termination, Subcontractor will be entitled to recover from the other Party (Contractor or Owner as applicable) payment for all Work satisfactorily performed but not yet paid for, including reasonable overhead, profit and damages. However, if the Owner has not paid the Contractor for the satisfactory performance of the subcontract work through no fault or neglect of the Contractor, and the Subcontractor terminates the Subcontract under this Section because it has not received corresponding progress payments as required, then Subcontractor shall be entitled to recover from the Contractor, within a reasonable period of time following termination, payment for all Work satisfactorily performed but not yet paid for, including reasonable overhead and profit thereon. The Contractor's liability for any other damages claimed by Subcontractor under such circumstances shall be extinguished by the Contractor pursuing said damages and claims against the Owner, on Subcontractor's behalf, in the manner provided for in the Subcontract/Subcontract.

**TERMINATION FOR CONVENIENCE** – This Subcontract may be terminated for any reason by the Owner, including but not limited to, for Owner's convenience, upon at least fourteen (14) days' written notice to the Subcontractor. Upon a termination for convenience, Subcontractor shall immediately stop all work. In the event of termination which is not due to the fault of the Subcontractor, within thirty (30) days from such termination the Subcontractor may submit to the Contractor a written claim for termination charges. The Subcontractor shall be equitably compensated only for the services performed prior to and up to the termination date. Such compensation shall not include any amount, expense, cost, charge, or loss of profits of Subcontractor after the date of termination. The Contractor shall pay the Subcontractor the amount due for goods and services delivered prior to termination and, in addition, the following amounts: (i) the contract price for all goods and services completed in accordance with the Order and not previously paid for; (ii) the cost of unique work in process no more than necessary to meet delivery schedules hereunder; and (iii) the costs of paying claims to

Subcontractor's suppliers for work directly allocable to the goods or services terminated. In no event will the Contractor reimburse Subcontractor for goods or services in excess of those required to meet Contractor's delivery schedule.

**NOTICE OF DELAY** – If Subcontractor encounters difficulty in meeting performance requirements, anticipates difficulty in complying with this Subcontract delivery schedule or dates, or has any actual or potential situation delaying or threatening to delay the timely delivery of goods or performance of the services under this Subcontract, the Subcontractor shall promptly give notice thereof to the Contractor in writing within three (3) business days after the conditions creating the anticipated delay become known to the Subcontractor giving pertinent details.

**INDEPENDENT CONTRACTOR** – Subcontractor shall be an independent contractor under this Subcontract and warrants that its employees shall not be deemed employees of Prime Contractor. Subcontractor shall assume all rights, obligations and liabilities applicable to it as an independent contractor. Nothing contained herein shall be construed as creating any agency, partnership, joint venture, or fiduciary relationship. Neither Party shall have the unilateral authority to bind the other party in any manner whatsoever.

Subcontractor shall comply with any and all local, state and federal laws including, without limitation, those related to age, citizenship, hours, wages, and conditions of employment affecting the service covered by this Subcontract; and Subcontractor shall pay the taxes or contributions measured by wages of its employees required by the Internal Revenue Code, the Federal Unemployment Tax Act, Federal Insurance Contributions Act, and any other payroll tax. Both Parties agree to fully indemnify each other and hold each other harmless with respect to any claims, assessments, suits, expenses (including, but not limited to, reasonable attorneys' fees), damages, settlements or losses incurred by the other party, which arise as a result of any taxing authority or any other person or entity alleging liability on the part of either party for any of the other party's taxes, including but not limited to any back taxes or penalties arising out of either party's classification as an independent contractor.

**EXPORT CONTROL COMPLIANCE** – All Parties shall comply with all applicable U.S. export laws and regulations, including International Traffic in Arms Regulations ("ITAR"), Office of Foreign Assets Control regulations ("OFAC"), and the Export Administration Regulations ("EAR"). The subject technology of this Subcontract (including data, services, software and hardware provided hereunder, defined as "Controlled Technology") may be controlled under these laws and regulations and may not be exported or re-exported without prior authorization in accordance with ITAR, OFAC, and EAR. Subcontractor hereby certifies that all Subcontractor employees who have access to the Controlled Technology are U.S. citizens, have permanent U.S. residency or have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3).

**CONFLICT OF INTEREST** – Subcontractor represents and warrants that its performance of the Subcontract will not in any way conflict with any continuing interests or obligations of Subcontractor or its employees or Subcontractors. Subcontractor further warrants that while the Subcontract is in effect, Subcontractor and those of its employees and lower-tier subcontractors participating in the performance of the Subcontract will refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Subcontractor's relationship with Contractor or its performance of the Service or this Subcontract.

**GENERAL FLOW-THRU CLAUSES** – Subcontractor agrees to be bound to Contractor by all of the terms of the Agreement between Contractor and Owner and by the Contract Documents, as applicable, solely to work performed by the Subcontractor and to assume towards Contractor all of the obligations and the responsibilities pertaining to the Subcontractor's work that Contractor by those instruments assumes toward Owner and Subcontractor shall have the same rights and

remedies against the Contractor as the Contractor has against the Owner.

Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the "Proposed Subcontract" that may be at variance with the Contract Documents.

**CHANGES** – In accordance with the requirements as stated in the Subcontract, the Contractor may at any time, by written order to the Subcontractor's Authorized Representative, make changes or additions within the general scope of the Subcontract to the drawings, designs, specifications, instructions, method of shipment or packing, or place of inspection, delivery or acceptance. Such changes shall be negotiated in good faith and mutually agreed upon terms by the signing of a bilaterally executed modification to the Subcontract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Subcontract, Subcontractor shall notify the Contractor in writing within five (5) business days and an appropriate equitable adjustment will be made in the price, the delivery schedule, or both, by written modification of this Subcontract. Any claim by Subcontractor for such adjustment must be asserted within thirty (30) working days, or such other period as may be mutually agreed on in writing by the Parties, after Subcontractor's receipt of notice or knowledge of the change. Nothing herein shall excuse Subcontractor from proceeding with the Subcontract as changed within the general scope of this order. Changes that cannot be mutually agreed upon shall be resolved in accordance with the executed Subcontract and Article titled DISPUTE RESOLUTION referenced herein. However, nothing in this provision shall excuse the Parties from proceeding with the Subcontract as changed.

**FOREIGN TAXES AND FEES (applicable to work in Foreign locations only)** – Subcontractor has only included local, state and federal taxes for the United States within its proposal/quote; therefore, if there are additional applicable foreign taxes, duties, customs charges and fees associated with this effort, they will be itemized on the invoice and billed at cost. If a subcontract to exempt the United States from specific taxes and fees exists, then Contractor shall adequate justification to this Subcontract's Terms & Conditions so that they can be flowed down accordingly with the appropriate certifications to ensure accurate processing and submission for such exemption(s).

**LICENSES AND FEES** – Subcontractor shall obtain, at its own cost, all licenses (including professional licenses), permits, certificates, fees and authorizations necessary for Contractor to do business in all jurisdictions where any part of the performance of the Subcontract Services is to be performed, including any increase therein, if any, during the life of the Subcontract.

**PACKING AND SHIPPING** – Deliveries shall be made as specified without charge for boxing, crating, or storage, unless otherwise specified. Material shall be suitably packed to secure lowest transportation costs and to conform to the requirements of common carriers and any applicable regulations and/or specifications. Bills of lading should accompany each invoice. Unless otherwise specified, delivery shall be FOB Destination.

**RECORDS MAINTENANCE**– During the term of this Subcontract and for a period of two (2) years after performance of such goods and/or services, Subcontractor shall maintain, at its expense, all records and accounts pertaining to the Services performed by Subcontractor under this Subcontract including, but not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, quality processes, shipping and export, certifications, and receipt records. Upon reasonable written request Contractor may request that a mutually agreed upon third party Certified Public Accounting firm or Defense Contract Audit Agency (DCAA) perform an audit of non-proprietary records and accounts at agreed upon times during the course of such services and for two (2) years after the performance of such services.

**CLOSEOUT** – Within ninety (90) calendar days after the expiration or termination of this Subcontract, Subcontractor shall submit a closeout

package that includes (as applicable): (i) Subcontractor's final invoice; (ii) Subcontractor's assignment of refunds, rebates, credits and other amounts; (iii) Government property disposition, if applicable; and (iv) Subcontractor's release of claims, which shall waive, release and discharge Contractor, and its officers of and from any and all liabilities, obligations, disputes, claims and demands whatsoever arising under or relating to the relevant period of performance under this Subcontract.

For cost reimbursable task orders, Subcontractor shall submit a Delivery/Task Order Closeout Package within ninety (90) calendar days after final indirect rates have been approved by Subcontractor and a cognizant DCAA office.

**PATENT INDEMNITY CLAUSE** – Subcontractor guarantees that the sale or use of Subcontractor's products will not infringe any U.S. or foreign patent. Subcontractor covenants that upon Contractor's request and at Subcontractor's expense, Subcontractor will defend or assist its defense of any suit or action that may be brought against Contractor or Contractor's vendees, mediate or immediate, or against those selling or using Subcontractor's products by reason of any infringement or claim thereof predicated upon the sale of Subcontractor's products or use thereof as above provided.

**EXECUTIVE ORDER 11246** – The provisions of Section 202 of Executive Order 11246, the provisions of the "Equal Opportunity Clause" in 38 U.S.C. 2012, the Vietnam Era Readjustment Act of 1974 and the provisions of the Equal Opportunity Clause Section 503 of the Rehabilitation Act of 1973 are expressly incorporated herein by reference and shall be applicable to this Subcontract, Purchase Order, lease or government bills of lading unless exempted under the rules, regulations or orders of the Secretary of Labor.

**INDEMNIFICATION** - To the fullest extent permitted by law, both Parties shall indemnify and hold harmless each other, and their employees, from and against all claims, damage, losses and expenses, including but not limited to reasonable attorneys fees, costs, judgments, or interest arising out of or resulting from performance of the other Party under this Subcontract, provided that any such claim, damages, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or the destruction to tangible property to the extent caused solely by negligent, grossly negligent, or willful misconduct acts or omissions of the other Party, their subcontractors, sub-sub-contractors or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable or responsible.

**PROPRIETARY INFORMATION** - Proprietary Information delivered by the disclosing Party to the receiving Party shall be for the purpose of discussing future business opportunities or shall specifically identify a given contract effort that is of mutual interest to the parties. Both Parties agree not to use, reproduce, or disclose to any third party or use any information furnished by or acquired from the other Party as a result of the services or products received under this Subcontract, except to the extent required by law or otherwise authorized in writing by an Authorized Representative of the other Party. Disclosures to the U.S. Government for any purpose other than those contemplated by such Regulation shall be subject to further written agreement of the Parties. Information that is contained in reports, drawings, specifications, other engineering and manufacturing information, documents, including fully loaded cost or pricing or other records that are furnished by or on the behalf of Contractor to Subcontractor relative to this Subcontract, if not lawfully in the public domain, shall not be disclosed to others, except subcontractors who have a similar agreement to protect the proprietary information, is independently and lawfully developed by the Subcontractor without the use of the Proprietary Information and, then, only when subject to the above restrictions.

**PRECEDENCE** – All documents and provisions of this Subcontract shall be read so as to be consistent to the extent practicable. In the event various parts of this Subcontract are inconsistent, the following order of precedence shall apply: (i) modified and negotiated terms and conditions agreed upon in writing by both Parties; (ii) terms and conditions that are

incorporated into this Subcontract by reference; (iii) this document titled Standard Terms and Conditions; (iv) all other attachments, agreements, and appendixes incorporated herein by reference.

**SURVIVABILITY** – It is agreed that certain obligations of the Parties under this Subcontract which, by their nature, would continue beyond the termination, cancellation, or expiration of this Subcontract, shall survive termination, cancellation or expiration of this Subcontract. Such obligations include, by way of illustration only and not limitation, those contained in the following sections: GOVERNING LAW; DISPUTE RESOLUTION; INDEMNIFICATION; RECORDS MAINTENANCE; INSURANCE; PROPRIETARY INFORMATION; and WARRANTY.

**WAIVER** – An effective waiver under this Subcontract must be in writing and signed by the Party waiving its right(s). A waiver by either Party of any instance of the other Party's noncompliance with any obligation or responsibility under this Subcontract will not be deemed a waiver of subsequent or other prior instances of non-compliance. Either Party's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Subcontract, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, and/or any right or privilege.

**KICKBACKS** – By accepting this Subcontract, Subcontractor certifies that it has not offered, provided, or solicited and will not offer, provide, or solicit any kickback in violation of the Anti-Kickback Act of 1986 (41 USC §§ 51-58). "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided, directly or indirectly, for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Prime Contract or a subcontract relating to a Prime Contract.

**BANKRUPTCY** – Subject to the rights of any trustee in bankruptcy and to applicable law, in the event that either Party becomes or is declared insolvent or bankrupt, the subject of any proceedings related to its liquidation or insolvency, or for the appointment of a receiver or similar officer, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, the applicable Party agrees to furnish written notification to the other Party within five (5) working days. The other Party shall then have the right, by written notice, to terminate this Subcontract and/or any Task/Delivery Order(s) issued hereunder.

**NOTIFICATION OF DEBARMENT OR SUSPENSION** – Each Party shall immediately provide written notice to the other Party if at any time during the performance period of this Subcontract and/or any Task/Delivery Order(s) issued hereunder, a Party is suspended, debarred or declared ineligible for contract award by any Government Department or Agency, or a Party is notified that such action is possible or pending.

**ENTIRE SUBCONTRACT** – It is expressly agreed by the Parties hereto that this Subcontract constitutes the entire and only Subcontract between the Parties hereto; that there are no Subcontracts, understandings, or covenants between the Parties hereto of any kind, nature or description, express or implied, oral or otherwise, which have not been set forth herein. Notwithstanding the foregoing, the Subcontractor's Proposal with assumptions and clarifications is hereby incorporated by reference with full force and effect as if provided herein, and if contradictions between said Proposal and the Subcontract or Purchase Order, then the Proposal shall prevail.

**CLAUSES TO BE INCORPORATED (OR, IF CONFLICTING, SUPPLEMENT) FOR CONSTRUCTION PROJECTS IN ADDITION TO THE ABOVE TERMS AND CONDITIONS:**

**DEFINITIONS:** The words "ARCHITECT" or "ENGINEER" shall mean Architect or Engineer or other representative of the Owner or Prime Contractor under whose supervision or inspection of the Work is required to be done by the terms of the primary contract between the Owner and the Contractor.

The words "BUILDING" or "STRUCTURE" shall also mean and include outside utilities, sidewalks, landscaping, roads, streets, and other subjects and objects of construction provided for in the principal contract between the Owner and the Contractor.

The term "CONTRACTOR" can also be defined as the "CONSTRUCTION MANAGER".

The use of the term "WORK" shall also mean the Statement of Work or Scope as defined in the project documents, plans and drawings under the Subcontract.

**CONTRACT DOCUMENTS:** The Contract Documents consist of this Subcontract, the conditions of the contract between the Contractor and the Owner (general, supplementary and other conditions), the drawings, plans, specifications, the bid package, all addenda thereto issued prior to the execution of this Subcontract and subsequent modifications thereto.

The Contract Documents, including, but not limited to, the drawings, plans, specifications, conditions, bid package, and addenda thereto, shall be kept on file and shall be considered as exhibits to this Subcontract and are hereby incorporated by reference into the Subcontract. WORK shown on drawings, though not mentioned in the specifications, or described in specifications, and not shown on drawings shall be executed as part of this Subcontract, and said drawings or specifications shall be construed as supplementing one another. To the extent there is any discrepancy or ambiguity between various provisions in the Contract Documents, the Parties shall agree in writing as to which provision upon the Subcontractor shall apply.

**SUBMITTALS:** Time is of the essence of this Subcontract, and the Subcontractor shall provide, within ten (10) days of receipt of the Subcontract, the shop drawings and other required data and furnish same for approval prior to the fabrication of any item to be furnished under this Subcontract. Submittal data shall be prompt and complete to ensure scheduled delivery of such equipment and/or materials, so as not to delay the progress of the WORK. Adequate copies of such data shall be submitted, plus the number of copies desired by the Subcontractor for his use. In the instance of specifically prepared fabrication drawings, submittal shall consist of one reproducible drawing and two prints minimum. Subcontractor agrees to keep Contractor fully informed regarding his delivery schedule and will immediately advise the Contractor should any delay be anticipated. A complete up-to-date procurement schedule will be submitted on forms acceptable to the Contractor along with products submitted or shop drawings.

As-built drawings and data shall be maintained and recorded by the Subcontractor as applicable to his work. Approval of any material data, shop drawing, or suppliers schedule shall not relieve the Subcontractor of any duty and responsibility to perform the WORK in the manner necessary to product the results required by the Contract Documents.

**SUPERINTENDENT:** The Subcontractor shall maintain a competent and experienced Superintendent of Foreman on the job at all times, during the period the WORK is executed, with authority to carry out directions from the Contractor relating to the Subcontractor's WORK of responsibility.

The Subcontractor shall provide technical services as required or specifically specified to effect the operation of equipment and/or materials furnished under this Subcontract, including performance of specific testing, if any and shall instruct the Owner's personnel in the operation.

**MUTUAL RESPONSIBILITY**

a. The quantity and scope of Work required herein is directed by the whole of the Contract Documents, and Subcontractor acknowledges his requirement under this Subcontract to coordinate his WORK with materials and/or equipment to be furnished by others to insure a completely compatible system. Accordingly, the Subcontractor shall review the fabrication drawings and the product data of all items requiring integration and compatibility with the WORK required hereunder.

b. The Subcontractor shall review the surfaces provided by others to which his WORK is to be applied, and shall notify the Contractor of any known defect or condition detrimental to proper procedures, prior to commencement of his WORK; otherwise, it shall be deemed that the Subcontractor has accepted the conditions of such surfaces and shall be liable for all consequences resulting there from.

c. Subcontractor hereby warrants to constantly maintain proper housekeeping controls of construction debris and litter arising from his operations and shall clean all debris and foreign material contributory to his operation daily.

d. Subcontractor will provide, maintain and remove from the project site on completion of WORK, all required temporary offices, structures for the use of his employees, sheds and storage facilities complete with all necessary utilities, gas, telephone and water which he may require for the execution of the Subcontract. Storage areas for the use of the Subcontractor shall be designated by the Contractor, and no materials or equipment shall be stored by the Subcontractor except in areas approved by the Contractor. Such storage areas shall be maintained orderly by the Subcontractor.

e. The Subcontractor shall provide and be responsible for layout, including the accuracy thereof, necessary for the performance of the WORK required herein.

f. The Subcontractor represents that it has investigated, examined, inspected, and thoroughly familiarized itself with the Contract documents, the site and adjoining premises in connection with which the WORK covered by this Subcontract is to be performed, and that it has thoroughly informed itself as to any difficulties in connection therewith, and that the Contractor has made no representation of any kind or nature with reference thereto not contained in this Subcontract. Commencement of this WORK or any portion thereof by the Subcontractor shall be conclusive evidence that the jobsite or that part thereof where such work is being installed is in proper condition for the reception and installation of the work.

g. Subcontractor recognizes that other subcontractors or persons may be engaged in the performance of work at the locality covered by this Subcontract and that all parties performing work on the project must coordinate their work in order to meet the project schedule. Subcontractor shall layout and prosecute its work so as not to interfere with the performance of work by others, and will cooperate in performing its work to meet the project schedule. All matters of difference between the subcontractor and others in this respect shall be referred to contractor for immediate decision. Subcontractor acknowledges the contractor has the right to update, resequence and/or revise the project schedule during the course of the project and the subcontractor agrees to be bound by these revisions.

**REGULATORY COMPLIANCE** – The Subcontractor agrees to comply with all municipal, state and Federal laws and ordinances where the same may apply to said building or structure of effect of WORK. It is agreed that federal and state tax laws, social security laws, applicable portions of the OSHA 29 CFR 1910, and Safety and Health Regulations for Construction 29 CFR 1926, and unemployment compensation laws are part of this subcontract and the subcontractor agrees to comply herewith.

Safety Data Sheets (SDS) are required on materials that the Subcontractor is going to use on the project and shall be delivered as specified by the Contractor.

#### **ENCUMBRANCES**

a. The Subcontractor shall turn the WORK over to the Contractor in good condition and free and clear of all claims, encumbrances, or other liens.

b. The Subcontractor shall furnish the Contractor, if requested, evidence of the payment of all bills and expenses incurred by the Subcontractor for labor, services, equipment and materials used by the Subcontractor, and liability incurred by the Subcontractor in any way for the purpose of using the same on or about said building or said

construction project, and written releases in form acceptable to the Contractor from all persons, firms, or Corporations that may have furnished to the Subcontractor, any services, equipment and materials, whether on or for the aforesaid construction project, and written releases of lien from all persons, firms and corporations that may have in any way had any dealing and agreements in connection with the WORK of the Subcontractor under this Subcontract.

c. Any and all transportation tax, sales tax, or any other tax that might accrue through purchase of materials or amounts paid for labor by the Subcontractor or occasioned by performance of this Subcontract shall be borne and paid for by the Subcontractor.

d. The Subcontractor agrees that payment due hereunder is not assignable and that no part of this Subcontract can be assigned, except by and in accordance with the written consent of the Contractor.

#### **PAYMENTS**

a. The Subcontractor shall submit for approval within ten (10) days (or as specified by Contractor) hereof and prior to any payment made hereby a schedule of values with respective quantities illustrated, in accordance with the divisions illustrated by the Uniform Construction Index (UCI).

b. It is expressly agreed that time is the essence of the Subcontract, and that the payment of the consideration is executory and conditioned upon completion of this Subcontract and completion of the WORK as herein specified.

c. No progress payment under this Subcontract shall be conclusive evidence of the performance of this Subcontract either in whole or in part, and no payment shall be construed to be acceptance of defective WORK or improper materials.

d. The Subcontractor shall pay for all materials and labor used in, or in connection with, the performance of this Subcontract through the period covered by previous payments received from the Contractor, and furnish satisfactory evidence when requested by the time of final payment, and affidavit certifying to the Subcontractor's payment in full for all items relating to the cost of the WORK hereunder; and also a final waiver of lien and complete release on the form designated by the Contractor upon Subcontractor's receipt of amounts properly invoiced.

e. Final payment is further subject to the Contractor's prior receipt from the Subcontractor of all written guarantees and warranties for all items relating to the WORK, a final waiver of lien, complete releases and an affidavit certifying Subcontractors payment in full for all items relating to the WORK.

**LOWER TIER SUBCONTRACTORS** –The Subcontractor shall furnish Contractor with a copy of any or all lower-tier subcontracts for performance of work under this subcontract as requested by Contractor. If the Contractor determines that any lower-tier subcontractor is incompetent or undesirable, Contractor will notify the Subcontractor accordingly and immediate steps will be taken for cancellation of such lower-tier subcontract. Nothing contained in this subcontract shall create a contractual relationship between any lower-tier subcontractor and the Contractor. Lower-tier subcontractors are subject to all the provisions of this Subcontract.