



SUBCONTRACTOR TERMS AND CONDITIONS

"MSS" and "Contractor" shall both mean the MSS entity named on the face of the Subcontract which is buying the goods and/or services. "Subcontractor" means the person or entity who accepted MSS's offer or is named on the face of the Subcontract.

1. CONTRACT DOCUMENTS & AGREEMENT : (a) The term "Agreement" as used herein shall mean this Subcontract or Purchase Order including its exhibits & addenda, along with the Contract Documents set forth below, comprises the full and entire agreement between parties affecting the Work described herein (collectively referred to as the "Agreement"). No other agreements or understandings of any nature concerning the same has been entered into, or will be recognized. MSS has made no inducements or representations to Subcontractor whatsoever except as expressly stated in this Agreement. No oral modification of this Agreement shall have any force or effect. (b) The Contract Documents are enumerated as follows, and incorporated herein as part of this Agreement as if fully set forth herein: (i) This Subcontract including all Exhibits and addenda; (ii) Prime Contract which consists of the contract agreement between MSS and its Customer on this Project; (iii) All plans, specifications, general or supplementary conditions, addenda, amendments, modifications, including but not limited to purchase order change orders, project schedule; and (iv) any other documents or terms attached hereto and incorporated herein by reference. Subcontractor agrees that all of the Contract Documents are available upon request and shall be deemed to be incorporated herein by reference and made a part hereof, and the Subcontractor agrees to be bound to MSS all of the terms and provisions thereof, insofar as they apply to the Work hereinafter described ("Work").

2. THE WORK : Subcontractor shall furnish all services, supervision, labor, tools, equipment, services, materials and supplies necessary to perform the Work specified herein. Subcontractor shall perform the Work in accordance with the Contract Documents, the provisions of this Subcontract, and that which is reasonable and inferable therefrom. Subcontractor shall assume all responsibilities of MSS to its Customer in relation to performance of the Work. The Subcontractor represents and agrees that it has carefully examined and understands the Subcontract and the other Subcontract Documents, that has investigated the nature, locality, and site of the work and the conditions and difficulties under which the work is to be performed, and that it enters into this Subcontract on the basis of its own examination, investigation, and evaluation of such matters and not in reliance upon any opinions or representations of MSS or the Customer or any of their respective officers, agents, or employees.

3. PAYMENT : ALL INVOICES MUST BE SENT TO accounts.payable@mssolutions.com. Invoices must have the Purchase Order/Subcontract # on its face or it will be rejected. MSS shall not be liable to pay invoices not sent to this email. (a) MSS will pay Subcontractor the Subcontract Price as set forth herein, which includes all costs for the Work, including any taxes. The Subcontract Price shall not be increased based upon future increases in the costs or pricing of Subcontractor's materials or labor under the theories of force majeure, impracticability, or impossibility of performance, or as result of the impacts of supply chain issues, pandemics, or other factors not within Subcontractor's control. As conditions precedent to its entitlement to payment from MSS, MSS must preapprove Subcontractor's invoices and Subcontractor must submit with its invoice, O&M manuals, partial and final lien waivers releases and a sales tax affidavit on the forms attached hereto and incorporated by reference herein, and any other documentation required by the Prime Contract or as requested by MSS. (b) Financing the Work has been completed or that payment is due. (c) As a condition precedent to payment, Subcontractor must provide a mutually agree



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through (c) arise in to (including negligence), contract, warranty, strict liability, or otherwise.

8. INSURANCE: Subcontractor shall purchase and maintain insurance that will protect Subcontractor from claims arising out of Subcontractor operations under this Subcontract whether the operations are by Subcontractor, or any of Subcontractor's consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. (a) Subcontractor shall purchase from an insurance company or companies lawfully authorized to do business in the jurisdictions in which the Subcontractor will perform any of its obligations related to the Work hereunder: (i) Commercial General Liability: including, without limitation, Premises and Operations Liability; Contractual Liability; Products Liability and Completed Operations Liability for a minimum of five (5) years after completion of the Work hereunder; written on an "occurrence" basis with minimum limits of \$1,000,000 per occurrence and \$2,000,000 General Aggregate; (ii) Automobile Liability: covering all owned, non-owned, and hired vehicles with minimum limits of \$1,000,000 combined single limit or applicable statutory limits; (iii) Workers Compensation and Employers' Liability: provide statutory workers' compensation insurance wherever Work is done and Employers' Liability minimum limits of \$1,000,000; (iv) Umbrella Liability: minimum limits of \$2,000,000 (v) If applicable, Professional or Errors and Omissions Liability: with minimum limits of \$2,000,000 per occurrence/\$2,000,000 aggregate. All of the above policies will be written to provide a waiver of subrogation in favor of MSS and shall be primary and noncontributory, contain a separation of insureds clause and must provide additional insured status on behalf of MSS. The Subcontractor shall provide a certificate of insurance and other documentation as MSS may reasonably require evidencing the existence of such insurance.

9. TERMINATION: (a) MSS may terminate all or any part of its Work, without liability to MSS, if Subcontractor (i) fails to deliver goods or perform services within the time and in the quantities and of the quality required by or to give adequate assurances requested by MSS; (ii) breaches the terms of Agreement (including Subcontractor's warranties and covenants); (iii) fails to make progress so as to endanger timely and proper performance of the Statement of Work, and such failure, if curable, is not cured within five calendar (5) days (or any shorter period that is commercially reasonable under the circumstances) after notice from MSS; or (iv) ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against Subcontractor or a receiver for Subcontractor is appointed or applied for, or an assignment for the benefit of creditors is made by Subcontractor. In addition to obtaining a refund or credit and any other remedies provided herein or available at law or in equity, MSS may, upon such termination, purchase substitute goods or services elsewhere, on such terms as MSS deems appropriate, and charge Subcontractor with any excess costs and losses incurred by MSS. (b) MSS may terminate all or any part of the Work for convenience, in which case (i) Subcontractor shall, as directed by MSS, cease work and deliver to MSS all satisfactorily completed goods or materials and work in process; and (ii) MSS shall pay to Subcontractor reasonable termination charges solely limited to the costs of materials, goods, and labor that are incurred prior to Subcontractor's knowledge of such termination, provided that Subcontractor takes reasonable steps to mitigate its damages. (c) To the extent not terminated by MSS, Subcontractor shall continue performance under the Statement of Work. (d) Any termination under Section 9(a) adjudged to be wrongful shall be deemed to then be a termination for convenience under Section 9(b) but with MSS having the right to avail itself of all of its remedies under the terms of this Subcontract at law or in equity.

10. ASSIGNMENT: Subcontractor will not assign this Subcontract without MSS's consent. If the Customer terminates the Prime Contract, Subcontractor will assign the Subcontract if the Prime Contract requires it.

11. WAIVER: The failure of MSS to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Subcontract to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

12. INDEPENDENT SUBCONTRACTOR: Each party shall be a separate contractor, independent contractor, and not an agent, partner, or employee of the other party. This Subcontract shall not be construed as a partnership, joint venture, or other form of association between the parties. Each party shall be responsible for its own taxes, including sales tax, and shall not be responsible for the taxes of the other party. Each party shall be responsible for its own insurance, including liability, property, and workers' compensation insurance. Each party shall be responsible for its own compliance with all applicable laws and regulations, including but not limited to labor laws, environmental laws, and safety laws. Each party shall be responsible for its own permits and licenses. Each party shall be responsible for its own bonding. Each party shall be responsible for its own record keeping and reporting requirements. Each party shall be responsible for its own compliance with all applicable laws and regulations, including but not limited to labor laws, environmental laws, and safety laws. Each party shall be responsible for its own permits and licenses. Each party shall be responsible for its own bonding. Each party shall be responsible for its own record keeping and reporting requirements.