



## **SUBCONTRACT AGREEMENT STANDARD TERMS AND CONDITIONS**

Lawson Electric Company, Inc.'s Subcontract Agreement Standard Terms and Conditions ("Terms and Conditions") are intended to be fully incorporated by reference into the Subcontract. In the event of any conflict between these Terms and Conditions, the Subcontract, or any of the Contract Documents, the provisions in the Subcontract shall govern and control. Any capitalized term not defined herein shall have the definition provided in the Subcontract Agreement.

1. **Representations.** The Subcontractor represents that it has carefully examined these Terms and Conditions, the Subcontract and all Contract Documents and is familiar with the terms and conditions thereof. Subcontractor further acknowledges and certifies that it has fully acquainted itself with all Project site conditions relevant to the Work, that it has made all investigations essential to full understanding of the difficulties which may be encountered in performing the Work, and that, as between the parties hereto and except as expressly provided otherwise in the Subcontract, Subcontractor shall furnish and perform all of the Work required in the Subcontract and the Contract Documents for the compensation stated in the Subcontract and assume full and complete responsibility for completion of the Work and subsequent warranties for the Work. Subcontractor further agrees to assume toward Lawson all the obligations and responsibilities Lawson may have assumed toward the Owner or Prime Contractor, including all conditions, drawings, specifications and addenda thereto and other Contract Documents, as applicable, generally or specifically, to the materials to be furnished and the Work to be performed under the Subcontract.

2. **Subcontract Price.** For full and satisfactory performance of all of the Work required in the Subcontract and the Contract Documents, in compliance with the Subcontract and Contract Documents, Lawson shall pay Subcontractor the Subcontract Price. This sum may only be changed in accordance with the provisions of the Subcontract.

3. **Taxes and Contributions.** The Subcontract Price includes, and Subcontractor hereby accepts exclusive liability for payment of all federal, state, county, municipal and other taxes imposed by law or contract, and based upon labor, services, materials, equipment or other items acquired, performed, furnished or used in connection with the Work, including but not limited to (a) contributions, taxes or premiums (including interest and penalties) measured upon payroll or required to be withheld from employees; (b) sales, use, personal property and other taxes (including interest and penalties), whether stated separately, imposed by reason of performance of the Work, or any materials, equipment, labor, services or other items in connection with the Work; or (c) pension, welfare, vacation, annuity and other benefit contributions payable in connection with labor agreements and applicable law.

4. **Time is of the Essence.** Time is of the essence for performance of the Work in accordance with the Subcontract, and Contract Documents. Subcontractor shall furnish all materials, labor, tools, equipment, and supplies necessary for the full performance of the Work in a proper, efficient, and workmanlike manner and within the time specified in progress schedules designated by Lawson or any revisions thereof. Subcontractor shall prosecute the Work in a prompt, diligent manner whenever such work, or any part of it, becomes available, or at such other time or times as Lawson may direct, and so as to promote the progress of the entire construction, and shall not interfere with or hinder the work of Lawson or any other contractor or subcontractor employed on the Project. Any materials that are to be furnished by Subcontractor hereunder shall be furnished in sufficient time to enable Subcontractor to perform and complete its Work within the time or times provided herein. Subcontractor, when requested by Lawson to do so, will submit copies of all purchase orders and other information sufficient to provide proof of materials order placement in a timely manner. Subcontractor shall reimburse Lawson for any and all damages suffered by or assessed against Lawson, including liquidated damages, which are attributable to or caused by Subcontractor's failure to furnish the materials, labor, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work, or to perform the Work required by the Subcontract within the time fixed or in the manner provided for herein. Payment of such damages shall not release Subcontractor from the obligation to otherwise fully perform the entire Work set forth in the Subcontract and in full compliance with all Contract Documents. Upon written request by Lawson, Subcontractor shall furnish to Lawson such evidence as Lawson may require relating to Subcontractor's ability to fully perform the Subcontract in the manner and within the time specified herein.

5. **Schedule.** The Schedule for any Work to be performed shall be as set forth in the Subcontract or Contract Documents, or as otherwise determined by Lawson.

6. **Changes.** Lawson may at any time and without notice to Subcontractor's surety, if any, make changes in the Work to be performed and materials to be furnished under the Subcontract and the Contract Documents. If Lawson shall order any changes or extra work, including additions, reductions or deletions in the Work, Subcontractor will upon written order of Lawson perform the Work required, and any adjustment in compensation or in the time for performance shall be as the parties agree in writing. Changes in the scope of the Work shall be agreed to in writing by the parties

using a change order request form selected by Lawson. If the parties are unable to agree on compensation or time for performance for the changes, Subcontractor shall nevertheless proceed with such work and shall give prompt written notice thereof to Lawson. Subcontractor shall comply with and be bound by any notice provisions and claims procedure, including arbitration, contained in the Term and Conditions. Any claim for any change in the Subcontract, including an adjustment of the Subcontract Price or time of performance, must be made in writing to Lawson within seven (7) days from the date such change is ordered or of the circumstances giving rise to such claim. No change in the Subcontract shall be binding on Lawson unless agreed upon by Lawson in writing prior to the commencement of the Work relating to such change. If Subcontractor fails to provide pricing for any requested change within this seven (7) day period, then Lawson's determination of the additional (or deductive) cost of the change shall be binding on the Subcontractor.

7. **Project Supervision.** (a) Lawson will employ a superintendent that will be assigned to the Project to act on behalf of Lawson ("Superintendent"). All communications given by the Superintendent, in accordance with the Contract Documents and within their authority as Superintendent for Lawson, shall be as binding on Subcontractor. Lawson's appointed project manager for the Project shall be copied on all communications between Superintendent and Subcontractor or any of its agents, representatives or employees.

(b) Subcontractor shall employ a full-time, on-site superintendent (satisfactory to Lawson) that will be assigned to the Project to act on behalf of Subcontractor ("Subcontractor Superintendent"). The Subcontractor Superintendent shall be competent and experienced and must be fully fluent and able to communicate in English. The Subcontractor's Superintendent shall have the full authority to carry out the Work as directed by Lawson. The Subcontractor's Superintendent shall be the Subcontractor's project site representative, and communications given to the Subcontractor's Superintendent shall be binding on Subcontractor. Subcontractor's Superintendent or their designee, acceptable to Lawson, shall attend all meetings related to the Work; failure to participate in meetings will be deemed a failure to provide adequate supervision. The Subcontractor's Superintendent shall not be replaced without Lawson's approval, and when replacement is deemed acceptable, the replacement shall be fully informed as to the Project specifics prior to assuming responsibility. It is not Lawson's responsibility to educate Subcontractor's personnel as to Project status or conditions. Any employees of Subcontractor whom Lawson deems to be incapable or in any way in conflict with the Project's needs, will be replaced with personnel acceptable to Lawson.

8. **Remedies for Default.** If Subcontractor fails to comply or becomes disabled from complying with any provisions herein and the failure is not corrected within forty eight (48) hours after written request is sent by Lawson, Lawson may in its sole discretion, without prejudice to any other right or remedy, (a) take over and complete the performance of Work at the expense of Subcontractor, or (b) without taking over the Work, furnish the necessary labor and materials and may employ any other person or persons including another subcontractor to finish the Work and provide the labor and materials therefore, all without liability on the part of Lawson for any resulting damage, including wear and tear, depreciation, theft, action of the elements, acts of God, fire, flood, vandalism, or other injury or damage to said materials, tools, and appliances. In the event Lawson exercises its rights under this paragraph, Subcontractor shall not be entitled to receive any further payment until the Work shall be completed in accordance with the Contract Documents and Lawson shall have received payment in full therefore from the Prime Contractor. If the expenses incurred by Lawson in completing the Work, or any portion thereof, exceeds the unpaid balance of the Subcontract Price, Subcontractor shall pay the difference to Lawson. As used in this Section 8 the word "expense" shall include actual cost to Lawson plus ten percent (10%) for overhead. The expense incurred by Lawson as herein provided, either for furnishing materials or for finishing work, and any damages incurred as a result of such default, shall be chargeable to and paid by Subcontractor and Lawson shall have a lien upon all of the Subcontractor's materials, tools, and appliances taken possession of, as aforesaid, to secure the payment thereof. Lawson shall have the right to enter upon the premises and take possession of all materials, tools, and appliances therein, for the purpose of completing the Work included in the Subcontract. Subcontractor shall be considered disabled from prosecuting the Work if Subcontractor's interest herein, or any part thereof, be assigned or transferred in any manner, either voluntarily or involuntarily or by operation of law or to appoint a receiver is filed by or against Subcontractor, or if Subcontractor dies or becomes insolvent, dissolves, or terminates its existence.

9. **Billings, Payment, Retainage.**

(a) Monthly progress billings must be submitted to Lawson in duplicate on or before the twentieth (20<sup>th</sup>) of the month (unless the 20<sup>th</sup> falls on a weekend, in which case such invoice will be due on the Friday before the weekend) in the form provided by Lawson. Progress billings correctly submitted will be processed and paid as follows:

i) Monthly payments will be made to Subcontractor for the Work and materials properly incorporated in the Project, less previous payments, within thirty (30) days after Lawson receives payment for the Work included in the invoice. Retainage, if any, will be withheld as set forth in the Subcontract or Contract Documents. Subcontractor agrees to furnish a schedule of values in detail acceptable to Lawson to aid Lawson in reviewing progress billings; schedule of values shall be submitted immediately upon receipt of the Subcontract and prior to submission (and processing) of first billing.

(b) Payments made on account of materials not incorporated in the Work but delivered and suitably stored, shall be made, if at all, in accordance with the Contract Documents. Payments for stored materials shall be made as provided by the Contract Documents, and requests for payments for stored materials shall be accompanied by vendor invoices, itemizing respective quantities and unit costs of such stored material. At its option, Lawson may require that a waiver of lien, effective as of the date of the payment, be furnished from both Subcontractor and the material supplier. Material stored on the site, and for which payment is requested, shall be in the care and custody of the Subcontractor and shall not

be removed from the site without the written consent of Lawson. Lawson's receipt of payment from Subcontractor for any stored materials is a condition precedent to Lawson's payment obligation, if any, to Subcontractor for such stored materials. Insurance certificates for stored materials shall be in a form acceptable to Lawson, naming Lawson and any other party required by Lawson as a loss payee and additional insured with respect to materials stored. A sample form of certificate will be provided on request.

(c) No partial payment to Subcontractor shall operate as approval or acceptance of work done or materials furnished under the Subcontract. If the Subcontract provides for payment for work to be performed on a unit price basis, Subcontractor agrees to be bound by Lawson's measurement of the quantity of work. Any partial payment or payments made by Lawson to Subcontractor will be subject to final audit and adjustment and Subcontractor agrees to reimburse Lawson for any overpayment. As between the parties hereto and except as expressly provided otherwise in the Subcontract, Subcontractor accepts the Subcontract Price set forth herein as full compensation for doing all work and furnishing all materials contemplated in the Subcontract; for all loss or damage arising out of the nature of the Work aforesaid or from the action of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work until its acceptance by Owner; for all risks of every description connected with the Work; for all expense incurred by or in consequence of the suspension or discontinuance of the Work; and for faithfully completing work and the whole thereof in the manner and according to the requirements of Lawson, Prime Contractor, Owner, and the Contract Documents.

(d) Lawson may deduct from any amounts due or to become due to Subcontractor any sum or sums owed to Subcontractor from Lawson, whether or not arising under the Subcontract or any other agreement with Subcontractor, and in the event of any breach by Subcontractor of any provision or obligation of the Subcontract, or in the event of the assertion by other parties of any claim or lien against Lawson, its surety, or Owner, or the Project arising out of Subcontractor's performance of the Subcontract. Lawson shall have the right, but is not required, to retain out of any payments due or to become due to Subcontractor an amount sufficient to completely protect Lawson, Prime Contractor, or Owner from any and all loss, damage, or expense therefrom until the situation has been remedied or adjusted by Subcontractor to the satisfaction of Lawson.

(e) Lawson reserves the right to make payment by joint check or by direct check to Subcontractor and to Subcontractor's material suppliers or subcontractors or any person who has any right of action against Subcontractor. Lawson reserves the right in its sole discretion to determine the manner and amount of payment to be made. Subcontractor agrees and covenants that money received for the performance of the Subcontract shall be used solely for the benefit of persons and firms supplying labor, materials, supplies, tools, machines, equipment, plant or services exclusively for this Project in connection with the Work and having the right to assert liens or other claims against the land, improvements or funds involved in this Project or against any bond or other security posted by Lawson, Prime Contractor, or Owner, that any money paid to Subcontractor pursuant to the Subcontract shall immediately become and constitute a trust fund for the benefits of said persons and firms, and shall not in any instance be directed by Subcontractor to any other purpose until all obligations arising hereunder have been fully discharged and all claims arising there from have been fully paid.

(f) Subcontractor agrees, as a condition precedent to payment hereunder, to furnish Lawson with such partial or final releases of claims or waivers of lien as Lawson may from time to time request. The Subcontractor agrees that Lawson shall be under no obligation to pay the Subcontractor for any work done on the Project until Lawson has been paid therefore by Prime Contractor, that receipt by Lawson of payment from Prime Contractor is a condition precedent to Lawson's obligation to make any payment to Subcontractor, and the provisions hereof stating the time of progress and final payments and the amount thereof are subject to the condition that Lawson shall receive from Prime Contractor progress or final payments in at least the amounts payable to the Subcontractor on account of work done by the Subcontractor on the Project; otherwise the time when such payments shall be due the Subcontractor shall be postponed until Lawson has received same from Prime Contractor. The Subcontractor expressly agrees that this pay if paid provision is not merely a timing provision, and to accept the risk that Subcontractor will not be paid for work performed if Lawson, for whatever reason, is not paid by Prime Contractor for such work.

(g) The Subcontractor acknowledges that it relies primarily for payment for work performed on the credit and ability to pay of Prime Contractor, and not of Lawson, and thus the Subcontractor agrees that payment by Prime Contractor to Lawson for work performed by the Subcontractor shall be a condition precedent to any payment obligation of Lawson to the Subcontractor. The Subcontractor agrees that the liability of the surety on Lawson's payment bond, if any, for payment to the Subcontractor is subject to the same conditions precedent as are applicable to Lawson's liability to the Subcontractor. Lawson's progress and final payments to Subcontractor including any payment of retainage may be withheld in the event Subcontractor is deficient in providing any submittals, pricing, warranties, as-built drawings, lien waivers, close out materials or other documentation as may be required by the Contract Documents. If at any time prior to final payment hereunder Prime Contractor reduces the amount of retainage held from Lawson, Lawson may, at its sole discretion, with satisfactory performance, without the consent of Subcontractor's Surety, reduce accordingly the retained percentage withheld from Subcontractor.

(h) Upon complete and satisfactory performance of the Subcontract by Subcontractor and final approval and acceptance thereof by Owner, Lawson will make final payment to Subcontractor of the balance due under the Subcontract within seven (7) days after full payment for such work and materials has been received by Lawson from Prime Contractor. Final payment, including reduction of or payment of any retainage will be withheld in the event Subcontractor is not in compliance with the Contract Documents, including any deficiency in providing any warranties, as-built drawings, close out materials, lien waivers, or other documentation as may be required by the Contract Documents.

10. **Tariffs and Trade Embargos.** In the event of a change in applicable law, the implementation or proposed implementation of new tariffs or trade embargos, or other similar events that increase the cost or decrease the availability of materials or equipment required to complete the Work (the "Enactments"), and such occurrence could not have been reasonably foreseen at the time the bid was prepared and the Contract price was established, the parties hereby agree to negotiate, in good faith, and execute a Change Order providing for an appropriate extension of time to complete the Work and adjustment to the Contract price to reflect the increase in the costs resulting from the Enactments. In the event the parties are not able to agree on the terms for the Change Order, the parties hereby agree to participate in mediation, and thereafter, arbitration, as contemplated in the dispute resolution provision provided herein.

11. **Indemnity and Hold Harmless.** **SUBCONTRACTOR SPECIFICALLY OBLIGATES ITSELF TO LAWSON IN THE FOLLOWING RESPECTS (AND THE SUBCONTRACT IS MADE UPON SUCH EXPRESS CONDITIONS): TO PROTECT, HOLD FREE AND HARMLESS, DEFEND AND INDEMNIFY LAWSON, INCLUDING ITS MEMBERS, OFFICERS, DIRECTORS, AGENTS, SHAREHOLDERS, AND EMPLOYEES, FROM ALL LIABILITY, PENALTIES, COSTS, LOSSES, DAMAGES, EXPENSES, CAUSES OF ACTION, CLAIMS OR JUDGMENTS, INCLUDING ATTORNEYS' FEES, RESULTING FROM INJURY TO OR DEATH SUSTAINED BY ANY PERSON (INCLUDING SUBCONTRACTOR'S EMPLOYEES) OR DAMAGE TO PROPERTY OF ANY KIND, WHICH INJURY, DEATH OR DAMAGE ARISES OUT OF OR IS IN ANY WAY CONNECTED WITH THE PERFORMANCE OR WORK UNDER THE SUBCONTRACT, AND FROM ANY CLAIMS, PENALTIES, DAMAGES, LIABILITY, LOSS, COSTS, AND EXPENSES, INCLUDING ATTORNEYS' FEES, ARISING FROM INJURY OR DEATH RESULTING THEREFROM, CAUSED OR ALLEGED TO HAVE BEEN CAUSED BY ANY VIOLATION OR INFRACTION BY SUBCONTRACTOR OF ANY LAW, ORDER, CITATION, RULE, REGULATIONS, STANDARD OR STATUTE IN ANY WAY RELATING TO THE OCCUPATIONAL HEALTH OR SAFETY OF EMPLOYEES, INCLUDING BUT NOT LIMITED TO THE USE OF LAWSON'S OR OTHER'S EQUIPMENT, HOIST, ELEVATORS, OR SCAFFOLD, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LAWSON. SUBCONTRACTOR'S AFORESAID INDEMNITY AND SAVE HARMLESS AGREEMENT SHALL APPLY TO ANY ACTS OR OMISSIONS, OR NEGLIGENT CONDUCT, WHETHER ACTIVE OR PASSIVE, ON THE PART OF SUBCONTRACTOR (OR ITS AGENTS, SUBCONTRACTORS OR EMPLOYEES); EXCEPT THAT SAID AGREEMENT SHALL NOT BE APPLICABLE TO INJURY, DEATH OR DAMAGE TO PROPERTY ARISING THEREFROM, BUT ONLY TO THE EXTENT OF, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LAWSON, ITS OFFICERS, AGENTS, SERVANTS, OR INDEPENDENT CONTRACTORS (OTHER THAN SUBCONTRACTOR) WHO ARE DIRECTLY RESPONSIBLE TO LAWSON. THIS INDEMNIFICATION AGREEMENT SHALL EXTEND TO CLAIMS ASSERTED AFTER TERMINATION, FOR WHATEVER REASONS, OF THE SUBCONTRACT.**

12. **Insurance.** Unless otherwise provided in the Subcontract, Subcontractor shall maintain insurance coverage as follows:

(a) The Subcontractor's General Liability Insurance limits must be at least \$1,000,000 for Each Occurrence, \$1,000,000 Personal Injury and Advertising Injury, \$2,000,000 Products/Completed Operations, and \$2,000,000 Annual General Aggregate where the General Aggregate limit shall apply separately to each project.

(b) The Prime Contractor shall be named as an Additional Insured on the Subcontractor's General Liability policy for the "ongoing operations" phase of any project that the Subcontractor is working for the Prime Contractor. The Additional Insured form titled "ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION" form CG2010 edition date 04-13 or similar and newer approved by the state's department of insurance may be used, or the Subcontractor's insurance carrier's equivalent form. The Certificate of Insurance shall also include a copy of the Additional Insured Endorsements that are part of the Subcontractor's Commercial General Liability Policy. The Additional Insured insurance coverage shall be Primary Insurance and noncontributory for work completed by the Subcontractor on behalf of the Prime Contractor before any other insurance, self-insurance, including any deductible that is maintained by the Prime Contractor.

(c) The Prime Contractor shall be named as an Additional Insured on the Subcontractor's General Liability policy for work that has been "completed" and no longer an ongoing operation by the Subcontractor on behalf of the Prime Contractor. The Additional Insured form titled "ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS" form CG2037, edition date 04-13 or similar and newer approved by the state's department of insurance may be used, or the Subcontractor's insurance carrier's equivalent form. The Certificate of Insurance shall also include a copy of the Additional Insured Endorsements that are part of the Subcontractor's Commercial General Liability Policy. The Additional Insured insurance coverage shall be Primary Insurance and noncontributory for work completed by the Subcontractor on behalf of the Prime Contractor before any other insurance, self-insurance, including any deductible that is maintained by the Prime Contractor.

(d) The Subcontractor's Workers' Compensation policy shall cover the Statutory Benefits of the state in which the work is performed. The ACORD® Certificate of Insurance shall list that the State of is covered under "3.A." of the policy.

(e) Subcontractor waives all rights against Prime Contractor, Owner, and Architect and their agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability, or Workers' Compensation and/or Employer's Liability Insurance maintained per requirements stated above.

(f) The Subcontractor agrees that they have secured these coverages as stated above and shall maintain the General Liability coverage during the Statute of Repose and/or Limitations. The Subcontractor agrees to inform Prime Contractor immediately in the event of any changes in coverage, including without limitation, cancellation, non-renewal or limitations on coverage. To reduce the impact to the Prime Contractor and to always be assured that coverage is in force, the Prime Contractor shall be named as a "Cancellation Notice Recipient" on each coverage that is represented in effect by the Certificate of Insurance.

13. **Warranty.**

(a) Subcontractor agrees to warrant and guarantee the Work, including all labor and materials covered by the Subcontract and any Work Order, in accord with the Contract Documents, and agrees to make good, at its expense, any defect in materials or workmanship, including the restoration of work of Lawson or other Subcontractors that has been affected thereby. Subcontractor further agrees that unless and until Lawson is released from responsibility by Prime Contractor and the Owner, Lawson may withhold payment from Subcontractor such sums as are necessary to protect and indemnify Lawson for any loss that may be caused by any breach or potential breach of said warranty or guarantee.

(b) The Subcontractor warrants to the Owner, the architect, Prime Contractor, and Lawson that materials and equipment furnished under the Subcontract and any Work Order will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the Work of the Subcontract will be free from defects not inherent in the quality required or permitted, and that the Work will conform with requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

14. **Use and Occupancy.** To the extent Owner elects to occupy and use any portion of the Work which has been either partially or fully completed by Subcontractor before final inspection and acceptance thereof by Owner, such use or occupancy shall not relieve Subcontractor of its guarantee of the Work, including all labor and materials relating thereto, nor of its obligation to make good, at its own expense, any defect in materials and workmanship which may occur or develop prior to Lawson's release from responsibility by Prime Contractor and the Owner.

15. **Other Contractors.**

(a) The Work provided for in the Subcontract and any Work Order constitutes only a part of the Project being performed for Owner by Lawson and others. Subcontractor, therefore, agrees to perform the Work called for in the Subcontract in such a manner that it will not injure or damage any other work performed by Lawson or any other subcontractor, and further agrees to pay Lawson for any damage that may be caused to such other work by Subcontractor or by its agents or employees. If the performance of any item of work by Subcontractor is related or dependent upon any other item of work performed or materials furnished by others, Subcontractor warrants, by undertaking to perform its work, that such other items are satisfactory and acceptable, and waives all claims against Lawson for additional compensation or for damages relating thereto. Subcontractor agrees further that if it causes any stains, blemishes, imperfections, marks or damage of any sort whatsoever, whether to its work or to the work of Lawson or to the work of another subcontractor, it will immediately remedy the damage so caused to the satisfaction of Lawson.

(b) Subcontractor further agrees to be responsible for all specific layout, backing, and testing of work and further to provide necessary scaffolding, hoisting of men and materials, etc., as may be required in the performance of the Subcontract. Subcontractor further agrees when so required to do any and all cutting and patching necessary in connection with Subcontractor's portion of the Work and agrees further that such cutting and patching shall match other work performed under the Contract Documents.

16. **Permits; Fees; Licenses; Codes.**

(a) Unless otherwise provided in the Contract Documents, the Subcontractor shall secure and pay for any permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Prime Contract and which are legally required. The Subcontractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

(b) It is the Subcontractor's responsibility to ascertain that the Work as described in the Contract Documents is in accordance with the applicable laws, statutes, ordinances, building codes, and rules and regulations. If the Subcontractor observes that portions of the Work are at variance therewith, the Subcontractor shall promptly notify the Lawson in writing. If the Subcontractor performs work contrary to laws, statutes, ordinances, building codes, and rules and regulations, the Subcontractor shall assume full responsibility for such work and shall bear the attributable costs.

(c) The Subcontractor agrees that it is properly licensed and has paid all necessary license fees, taxes, etc., and obtained and paid for the permits as required by the appropriate governing authority to perform the Work. The Subcontractor shall protect, hold free and harmless, defend and indemnify Lawson, including its members, officers, directors, agents, shareholders, and employees, from all liability, penalties,

costs, losses, damages, expenses, causes of action, claims or judgments, including reasonable attorneys' fees, resulting from any failure to be properly licensed or to perform the Work in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations.

17. **Safety.** Subcontractor will attend all Project site safety meetings and comply with Lawson's safety program including without limitation requirements for drug testing. The Subcontractor also agrees to comply with all of the Owner's safety and/or security requirements for the Project. Subcontractor will immediately remove any worker found to be in possession of, or under the influence of, any illegal or controlled substance. In addition, Subcontractor shall be responsible at all times for safety in connection with the Work and for compliance with all Applicable Laws

18. **Submittals.** When drawings, plans, specifications, samples or detail work shall be required by the Subcontract, or shall otherwise be required by Lawson to be submitted by Subcontractor, whether on account of Work required to be done hereunder or on account of changes in the Work, Subcontractor agrees to supply the same promptly to Lawson for approval by Owner, Prime Contractor, and/or architect as required. Information to be submitted for approval shall be in the form, timeframe, and quantity as required by the Contract Documents and provided so as to cause no delay in the Work or activities of Lawson or others. If any such drawings, plans, specifications, samples or detail work as submitted by Subcontractor deviate from or are inconsistent with the Contract Documents, and in the further event that any such deviations or inconsistencies shall cause Lawson to suffer any damage or incur any cost or expense because of delays or extra work or otherwise, Subcontractor agrees to reimburse Lawson therefore. If any such damage, cost or expense be imposed upon Lawson, Lawson may, at its option, withhold from Subcontractor any payment due or to become due to Subcontractor an amount sufficient to fully reimburse Lawson therefore. Unless stated otherwise, all items to be submitted shall be promptly delivered to Lawson Electric Company, at 6246 Dayton Blvd, Hixson, TN 37343. All submittals shall include the Subcontractor's name, Project name, contract number and any other pertinent information plainly identified on the material.

19. **Notices.** Any notice, where required or permitted by the terms of the Subcontract, shall be in writing and may be served by personal delivery, by e-mail, by mail or any standard form of communication. Personal delivery and e-mail is complete when the notice is delivered to Subcontractor or its representative at the Project or at the office address or e-mail address of Subcontractor appearing in the Subcontract.

20. **Document Conflict, Project Conditions.** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Subcontractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Except as modified by the Subcontract, the Work shall be performed and completed in accordance with the Contract Documents, including all addenda thereto, all of which Subcontractor acknowledges it has read and is familiar with. The Subcontractor shall carefully study and compare the Contract Documents with each other and shall at once report to Lawson any error, inconsistency or omission discovered. Subcontractor shall be liable for any damage resulting from such errors, inconsistencies, or omissions if it recognizes an error, inconsistency, or omission and fails to report it to Lawson before executing the Work. By performing any construction activity involving a recognized error, inconsistency, or omission in the Contract Documents, the Subcontractor assumes the risk of such performance and agrees to bear full responsibility for all costs of correction.

21. **Clean up.** Subcontractor shall perform its work as herein required so that the premises shall at all times be neat, orderly and free from debris. Upon termination or completion of its work, Subcontractor agrees to remove all unused materials and all equipment, utilities and facilities furnished by Subcontractor, to clean up all refuse and debris, and to leave the premises clean, orderly, and in good condition. Lawson may, as Lawson deems necessary, clean up Subcontractor's debris and charge Subcontractor for all expenses incurred as a result of such cleanup.

22. **Tobacco Policy.** The use of any tobacco product(s), including without limitation vaping or e-cigarettes, on the Project site once any finishing has begun is strictly prohibited. Once signs are posted or warnings issued, failure to abide by this "no tobacco policy" will be cause for removal from the work site. Should any more strict anti-tobacco use (or similar) rules be set forth in the Contract Documents, Subcontractor agrees to abide by such other rules.

23. **Labor.** Subcontractor is advised, and hereby agrees, to exert every reasonable and legitimate effort to assure that all labor employed by Subcontractor and its subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by other building and construction contractors on site. Subcontractor further agrees that this provision will be included in all agreements of the Subcontractor as well as in the Subcontractor's own contract, provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Tennessee Code Annotated, Section 50-1-206. In performing the Subcontract, the Subcontractor shall comply with Lawson's affirmative action programs and shall comply with any and all affirmative action obligations imposed by Prime Contractor under Lawson's agreement with Prime Contractor.

24. **Title to Work.** The Subcontractor warrants that title to all work covered by any invoice will pass to the Owner no later than the time of payment. The Subcontractor further warrants that upon submittal of an invoice all work for which Certificates for Payment have been previously issued and payments received from Lawson shall be free and clear of liens, claims, security interests or encumbrances in favor of the subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

25. **Mechanics Liens and Claims.** If at any time any liens or notices of lien are filed for labor performed or materials or equipment furnished or delivered to or for the Work, Subcontractor shall, within ten (10) days of the date of the filing of such notice of lien, discharge, remove or

bond off such lien or claim of lien to Lawson's satisfaction. Until such discharge or removal, Lawson shall have the right to retain from any monies payable hereunder an amount which Lawson, in its sole discretion, deems appropriate to satisfy such liens and pay the costs and expenses, including reasonable attorneys' fees, of defending any actions brought to enforce the same, or incurred in connection therewith or by reason thereof. If at any time there is any reasonable evidence indicating the probable filing of a claim for which Subcontractor is or may be liable or responsible hereunder, Subcontractor shall promptly settle, post a bond in favor of the claimant and Lawson in an amount and with a surety acceptable to Lawson, or otherwise dispose of such potential claim. Until such potential claim is settled, an adequate bond posted or it is otherwise disposed of, Lawson, pursuant hereto, may retain from any monies which would otherwise be payable hereunder so much thereof as Lawson, in its sole judgment, may deem appropriate to settle or otherwise dispose of such potential claim and to cover the costs and expenses, including reasonable attorneys' fees, of defending any actions brought to enforce such potential claim, or incurred in connection therewith or by reason thereof. However, upon the settlement of such claim, the posting of a bond or other disposition of the claim, Lawson shall within a reasonable period of time pay such sums withheld from the Subcontractor. To the extent not inconsistent with any other provisions in the Contract Documents, Lawson may apply any monies retained hereunder to reimburse itself for any and all reasonable costs, expenses, losses, and damages, liabilities, suits, judgments and awards incurred, suffered or sustained by Lawson and chargeable to Subcontractor as a result of a mechanic's lien or other claim asserted against Lawson for which Subcontractor may be responsible in whole or in part.

**26. Uncovering & Correction of Work.**

(a) If a portion of the Work is covered contrary to Lawson's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the architect, be uncovered for the architect's observation and be replaced at the Subcontractor's expense without change in the Contract Time or Price. If a portion of the Work has been covered which the architect has not specifically requested to observe prior to it being covered, the architect may request to see such work and it shall be uncovered by the Subcontractor. If such work is in accordance with the Contract Documents, costs of uncovering and replacement shall be handled by change order unless noted otherwise. If such work is not in accordance with the Contract Documents, the Subcontractor shall pay such costs.

(b) The Subcontractor shall promptly correct work rejected by the architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Subcontractor shall bear all costs of correcting such nonconforming or rejected work, including additional testing and inspections and compensation for the architect's services and expenses made necessary thereby.

(c) If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under the Contract Documents or by terms of an applicable special warranty greater than one year required by the Contract Documents any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Subcontractor shall correct it promptly after receipt of written notice from Lawson to do so unless Lawson has previously given the Subcontractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work under the Agreement and termination of the Agreement. The Subcontractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Subcontractor nor accepted by Lawson.

(d) If the Subcontractor fails to correct nonconforming work within a reasonable time, Lawson may correct it, subject to all remedies available to Lawson under the Subcontract, any Work Order, or in accordance with applicable law. If the Subcontractor does not proceed with correction of such nonconforming work within a reasonable time fixed by written notice from the architect or Lawson, Lawson may remove it and store the salvable materials or equipment at the Subcontractor's expense. If the Subcontractor does not pay costs of such removal and storage within ten (10) days after written notice, Lawson may upon ten (10) additional days written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Subcontractor, including compensation for the architect's or any other's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Subcontractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Subcontractor are not sufficient to cover such amount, the Subcontractor shall pay the difference to Lawson.

(e) The Subcontractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Subcontractor's correction or removal of work which is not in accordance with the requirements of the Contract Documents. If the Owner and Lawson prefer to accept work which is not in accordance with the requirements of the Contract Documents, Lawson may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made. Nothing contained in this paragraph shall be construed to establish a period of limitation with respect to any other obligations which the Subcontractor may have under the Contract Documents.

**27. Termination; Suspension.** Lawson may terminate or suspend the Subcontract, for convenience or with cause, in whole or in part immediately upon written notice to Subcontractor. Subcontractor shall be compensated only for the reasonable cost of actual work performed and equipment or materials furnished, as of the date of termination. Unless otherwise agreed in writing, in no event shall the total sum paid Subcontractor

exceed the cost of the Work agreed to herein. Subcontractor shall in no event be entitled to any additional compensation or costs arising from termination.

28. **Independent Contractor.** Neither the Subcontract nor any Contract Documents shall render the Subcontractor an employee, partner, or joint venture of Lawson for any purpose. Subcontractor is and will remain an independent contractor in its relationship to Lawson. Subcontractor shall be solely responsible for the methods and means by which the Work is performed. Subcontractor may assign or delegate the Work required to be performed under the Subcontract and Contract Documents to any subcontractor, provided that no such assignment shall relieve Subcontractor of its obligation to warrant and ensure all Work rendered complies fully with the Subcontract, Contract Documents and these Terms and Conditions.

29. **Dispute Resolution Procedures.** The following dispute resolution procedures shall govern any dispute between Subcontractor and Lawson, except insofar as any dispute resolution procedures set forth in the prime or owner contract are deemed to govern such dispute and are in direct conflict with the dispute resolution procedures set forth below.

(a) **Claims.** A "Claim" includes any demand, assertion, request or other claim made with respect to any matter arising out of or relating in any way to the Subcontract, the Contract Documents, these Terms and Conditions, or the Work. The responsibility to substantiate Claims shall rest with the Party making the Claim.

(b) **Informal Meeting(s).** A Party making a Claim must provide to the other Party prompt written notice specifying the existence and nature of any Claim. Within ten (10) days of receipt of such notice, the Parties shall endeavor to meet and attempt to resolve such Claim through informal discussions between both Parties' authorized representatives.

(c) **Mediation.** If the Claim is not resolved by informal discussions, the Parties shall submit the Claim to binding mediation, unless the Parties mutually agree in writing to bypass mediation and proceed directly to arbitration. The Parties will endeavor to mutually agree on an independent, private mediator. Only if the Parties are unable to agree on an independent, private mediator, the Parties shall submit the Claim to the American Arbitration Association ("AAA") for mediation administered in accordance with the Construction Industry Arbitration Rules and Mediation Procedures of the AAA ("AAA Rules") then in effect. All fees and expenses of the mediator shall be shared equally by the Parties (unless allocated differently at mediation), and each Party shall submit to the mediator such information or position papers as the mediator may request to assist in resolving the Claim.

(d) **Arbitration.** Notwithstanding any other provision herein to the contrary, if the Parties are not able to settle or resolve a Claim within one hundred twenty (120) days after the informal discussions and mediation was unsuccessful, then the Claim may be submitted to binding arbitration, in accordance with these dispute resolution procedures. The Parties will endeavor to mutually agree on an independent, private arbitrator. Only if the Parties are unable to agree on an independent, private arbitrator, the Parties shall submit the Claim to the AAA for arbitration administered in accordance with the Construction Industry Arbitration Rules. If the Parties mutually agree on an independent, private arbitrator, the AAA Rules will apply to any arbitration hereunder, except that Rules R-1 through R-7, R-14 through R-18, and R-55 shall not be applied, and all other references to the AAA shall be deemed to be deleted from the remaining AAA Rules.

(e) **Continuing Obligations.** During the pendency of any dispute between the Parties, each Party shall continue to perform as required under the Subcontract notwithstanding the existence of such dispute.

(f) **Arbitration Proceedings.** These dispute resolution procedures, including their enforceability, shall be governed by the laws of the State of Tennessee. The arbitration shall be conducted in Hamilton County, Tennessee.

(g) **Arbitrator Qualifications.** If the Parties are unable to agree on an independent, private arbitrator, the arbitration shall be conducted using an arbitrator selected by the Parties in accordance with the AAA Rules from the AAA National Construction Panel. In either case, such arbitrator shall be a practicing attorney with substantial experience in construction matters. If arbitrator selection is pursuant to the procedures of the AAA Rules, and the procedures do not result in the selection of an Arbitrator, the parties shall request an additional list of possible arbitrators from the AAA in order to select a mutually agreeable Arbitrator.

(h) **Arbitration Award.** The arbitrator shall issue a written, reasoned award stating the bases of the award and the amount(s) awarded. The award rendered by the arbitrator shall be final, and judgment may be entered upon it and enforced without prejudice to the rights of either Party to seek vacation of the award in accordance with the Arbitration Acts in any court having jurisdiction thereof. The arbitrator may award Liquidated Damages but shall not have any authority to award punitive or exemplary damages of any sort, including without limitation any penalties or similar damages under applicable law.

(i) **Arbitration Fees and Expenses.** In any arbitration or action at law or in equity to enforce the Subcontract or the rights of the parties under the Contract Documents, the prevailing party in such arbitration or action shall be entitled to its reasonable attorneys' fees in addition to any other damages and remedies. The failure by one Party to pay its share of arbitration fees and expenses shall constitute a waiver of such Party's Claim or defense in the arbitration.



(j) **Confidentiality.** All arbitration proceedings and other information and matters relating to the arbitration shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction; provided that any such disclosure shall be limited to the extent necessary to accomplish such enforcement of the award, and either Party may seek a protective order in connection therewith. The Parties agree to maintain such confidentiality.

(k) **Statute of Limitations.** In no event shall a demand for mediation or arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by statutes of limitations or repose in accordance with applicable law.

(l) **Waiver of Joinder Objection.** Subcontractor waives all objections to joinder of any third party to any mediation, arbitration or litigation in which such third party's conduct or services are involved in a common question of law or fact and such third party's presence is required if complete relief is to be accorded in the proceeding. Subcontractor also agrees to include in all contracts used or prepared by Subcontractor in connection with the Work, similar waivers on behalf of such third parties.

(m) **Discretionary Joinder.** Any party may include by joinder individuals or entities in accordance with the AAA Rules, or upon agreement of the parties.

(n) **Waiver of Jury Trial.** THE PARTIES ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF THE PARTIES, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE SUBCONTRACT, THE CONTRACT DOCUMENTS, THE PROJECT, THESE TERMS AND CONDITIONS, OR ANY WORK ORDER.

(o) **Claims by Subcontractor.** Notwithstanding any other provisions of the Subcontract or Contract Documents, Subcontractor must commence any mediation or arbitration proceeding not later than six (6) months after the breach or other event giving rise to Subcontractor's claim occurs, or Subcontractor knew or should have known of the existence (or facts and circumstances giving rise to the existence) of such claim, whichever occurs first, but in no event more than six (6) months after substantial completion of the Project.

30. **Governing Law, Venue & Attorneys' Fees.** The Subcontract, the Contract Documents, these Terms and Conditions, and the performance of all the obligations set forth therein shall be governed, construed, and enforced by the laws of the State of Tennessee and shall be performable and venue shall lie in state or federal court in Hamilton County, Tennessee. In any arbitration or action at law or in equity to enforce the Subcontract, the Contract Documents, these Terms and Conditions, or the rights of the parties under the Subcontract, the Contract Documents or these Terms and Conditions, the prevailing party in such arbitration or action shall be entitled to its reasonable attorneys' fees in addition to any other damages and remedies provided in the Subcontract, Contract Documents or these Terms and Conditions.

31. **Limitation of Liability.** In no event shall Lawson be liable for any (i) indirect, special, exemplary, consequential, incidental or punitive damages, or (ii) lost profits, lost revenues, lost business expectancy and/or business interruption losses. In no event shall Lawson be liable for any damages other than direct damages up to the amount paid to Subcontractor under this Agreement.

32. **No Damage for Delay.** Lawson shall not be liable to Subcontractor for, and Subcontractor hereby expressly waives, any claims against Lawson due to any losses, damages, costs, or expenses of any nature, whether direct or indirect or based in contract, tort, or any other theory at law or equity, including without limitation claims based on equitable adjustment, loss of productivity, inefficiency, storage or other costs which Subcontractor, its subcontractors, or any other person may incur as a result of any delays, including without limitation any interferences, suspensions, rescheduling, resequencing, changes or other acts, omissions or negligence of Lawson, its employees, representatives or agents (collectively, "Delay Losses"). Subcontractor understands and agrees that Subcontractor's sole and exclusive remedy in such event shall be an adjustment to the work schedule as provided herein; provided, however, an adjustment in the work schedule extending the time for Subcontractor's performance of the Work will only be granted and is expressly conditioned on Lawson receiving an extension of time for the performance of the Work. Subcontractor agrees to use its best efforts to mitigate any such Delay Losses, and Subcontractor shall use its best efforts to complete the Work in accordance with the Contract Documents without any additional costs to Lawson.

33. **Remedies.** If Subcontractor fails to comply or becomes disabled from complying with any provisions herein and the failure is not corrected within forty eight (48) hours after written request is sent by Lawson, Lawson may in its sole discretion, without prejudice to any other right or remedy, (a) take over and complete the performance of the Subcontract at the expense of Subcontractor, or (b) without taking over the Work, furnish the necessary labor and materials and may employ any other person or persons including another subcontractor to finish the Work and provide the labor and materials therefore, all without liability on the part of Lawson. In addition, Lawson specifically retains and does not waive any and all remedies available to Lawson under the Contract Documents, applicable laws, or otherwise, all of which are cumulative.

34. **Severability.** If any provision of these Terms and Conditions or the application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of the Subcontract and the application of such provisions which are not invalid to

persons or circumstances shall not be affected thereby, but rather these Terms and Conditions shall be enforced to the greatest extent permitted by law.