

MALVERN BUILD, LLC  
SUBCONTRACT GENERAL TERMS AND CONDITIONS

These Subcontract General Terms and Conditions (“Terms and Conditions”) are incorporated into and made a part of any and all construction related contracts, subcontracts or other agreements for the construction or improvement of real property entered into between MALVERN BUILD, LLC, a New York limited liability company with offices at 1020 John Street, West Henrietta, New York (hereinafter called the “Contractor”) and any entity or individual (hereinafter referred to as a “Subcontractor”) who enters into a contract or agreement with Contractor that refers to or incorporates these Terms and Conditions by reference. Such incorporation by reference may be made by a reference to a link to a page on Contractor’s website that contains these Terms and Conditions. Contractor and Subcontractor are sometimes hereafter collectively referred to as “parties” and individually as a “party”.

**SUBCONTRACTOR UNDERSTANDS AND AGREES THAT, NOTWITHSTANDING THE FACT THAT SUBCONTRACTOR MAY NOT EXECUTE THESE TERMS AND CONDITIONS OTHER THAN BY ACKNOWLEDGMENT ON CONTRACTOR’S WEBSITE, THEY ARE AND SHALL BE BINDING ON SUBCONTRACTOR AND SHALL BE DEEEMED INCORPORATED INTO ANY CONTRACTS, SUBCONTRACTS OR AGREEMENTS BETWEEN CONTRACTOR AND SUBCONTRACTOR. THESE TERMS AND CONDITIONS ARE MATERIAL TERMS AND CONTIONS OF SUCH CONTRACTS, SUBCONTRACTS AND AGREEMENTS AND MAY ONLY BE MODIFIED OR AMENDED ONLY BY A WRITTEN AGREEMENT SIGNED BY CONTRCTOR AND SUBCONTRACTOR.**

1. Owner, Project, General Contract and Subcontracts. The Contractor is a general construction contractor and/or construction manager. Contractor from time-to-time enters into contracts for the performance of general construction and/or construction management services (each, a “General Contract”) with an owner (“Owner”) with respect to construction projects on real property owned or leased by Owner (each, a “Project”). The Subcontractor desires to perform portions of work under one or more of the General Contracts as a subcontractor of the Contractor. Contractor and Subcontractor are entering into one or more subcontracts or services agreements (each a “Subcontract”) which describes the work and materials to be provided, constructed and/or installed by Subcontractor for the Project. Each Subcontract shall further define the respective rights and obligations of the parties as to the work to be performed by the Subcontractor, including the furnishing of all materials, tools, equipment, labor, permits, superintendence and other items (the “Work”). Contractor and Subcontractor agree that these Terms and Conditions shall be deemed incorporated into each such Subcontract. In the event that the Subcontractor performs work for the Contractor without entering into a written Subcontract, all Terms and Conditions set forth herein shall control and be applicable to the performance of such work

2. Contract Documents. As used in these Terms and Conditions, the term “Contract Documents” shall mean the General Contract and all conditions (general, special, supplementary and other), drawings, plans, specifications, appendices, addenda and exhibits, pertaining to either or both the General Contracts and Subcontract, all as the same may be amended from time-to-time.

3. Project Site. Subcontractor represents that prior to its entry into a Subcontract, it has visited each project site identified in the Subcontract (“Project Site”) and has familiarized itself with the local conditions under which the Work is to be performed and has correlated its observations with the requirements of the Contract Documents and that, to the extent applicable to the Work to be performed by the Subcontractor, the Subcontractor has examined subsurface conditions at the Project Site and all information relating thereto; that it has studied and compared all Contract Documents and has advised the Architect and Contractor of any error, inconsistency and omission that it has discovered. The Subcontractor acknowledges that it is not relying on the sufficiency of any estimates, records, tests, explorations or

representations of the Contractor, the Owner or the Architect or any of their agents. The Subcontractor shall use all necessary means to discover any defects in work at the Project Site not performed by the Subcontractor, shall promptly report any such defects to the Contractor before proceeding with any Work to be performed by the Subcontractor which might be affected by such defects, and shall allow Contractor a reasonable time to remedy such defects.

4. Quality of Work. The Work shall be performed in a good and workmanlike manner, in accordance with the plans and specifications referred to in the General Contract, to the satisfaction of the Owner, the Architect or Engineer for the Project and the Contractor.

5. Provisions of General Contract. Contractor's obligations to the Owner are set forth in the General Contract. The Subcontractor shall be bound by, and assumes toward the Contractor, all of the obligations and responsibilities the Contractor assumes toward the Owner by such General Contract and agrees to abide by all of the terms and conditions thereof. All rights and remedies reserved to the Owner under the General Contract are hereby reserved to Contractor in all dealings with Subcontractor. The Subcontractor shall be bound by all of the determinations of the Architect or Engineer for the Project to the same extent the Contractor is bound.

6. Lien Waivers from Suppliers/Joint Checks. Upon request from Contractor, as condition precedent to receipt of any payment from Contractor, Subcontractor shall, for each supplier identified as having charges included within the portion of the Work covered by any current or prior application for payment, provide lien waivers from such suppliers in a form acceptable to Contractor. Subcontractor agrees that Contractor may issue joint checks to the Subcontractor and a supplier with respect to the Project, which checks shall, at the request of the Contractor, be endorsed by the Subcontractor to the Supplier for purposes of causing the supplier to be paid. In the event the Subcontractor fails or refuses to endorse any such joint check, the Contractor shall have the right, but not the obligation, to pay the supplier directly. All payments made hereunder shall be credited against all amounts then owed or which may thereafter become owed to the Subcontractor by the Contractor on account of the Work.

7. Defective Work. Neither any certificate given or payment made hereunder, including the final payment, shall be conclusive evidence of proper performance of the Work, and no payment, including final payment, shall be construed to be an acceptance of defective work or improper materials.

8. Payments by Subcontractor. Subcontractor agrees to promptly pay any and all sums of money due by Subcontractor for labor, materials and services, including insurance and taxes, furnished in the performance of the Work, and Contractor shall have the right to receive as a condition precedent to the making of any payment hereunder, satisfactory evidence, including substantiating vouchers of the payment by the Subcontractor and those working under Subcontractor, of all indebtedness incurred therefor. In the event of non-payment by Subcontractor of any such sums for which Contractor or Owner might be or become liable, or on account of which a mechanic's lien could be filed, or in the event of damage by Subcontractor to other work on the Project, or in the event of breach of any provision of the Subcontract (including these Terms and Conditions) by Subcontractor, Contractor may retain and pay to the parties entitled thereto, including Contractor and Owner, out of any payment then due or thereafter to become due, an amount sufficient to pay any such sums and to completely indemnify Contractor and Owner for any loss or damage, including attorney's fees, which either may sustain or with which either may be chargeable on account thereof. To the extent that payments due or to become due Subcontractor are insufficient for this purpose, Subcontractor shall promptly pay to Contractor on demand any such insufficiency.

9. Quality of Work and Materials/Subcontractor Employees. If the Work or material furnished fails to meet the requirements of the plans, specifications or the Subcontract, it will be removed from the Project Site and replaced by the Subcontractor at its own cost. The Contractor may require the

Subcontractor to dismiss any individual employed on the Work whom the Contractor may deem incompetent, unsafe, or a hindrance to the progress of the Work. Such individual shall be discharged and not be again employed on any part of the Work without the written consent of the Contractor. It is understood that the Owner or Contractor shall have the right to inspect all materials and workmanship, and all possible facilities are to be given their inspectors, whether at the place of manufacture, building site, or other appropriate place as they shall determine.

10. Time of Performance. The Work shall be commenced and completed as set forth in the Subcontract. Subcontractor, in agreeing to complete the Work within the designated time has taken into consideration and made allowance for the ordinary delays and hindrances incident to such work, including delays in securing material or workers, weather, minor changes, omissions, alterations or otherwise. Should the Subcontractor be substantially obstructed or delayed in the commencement, prosecution or completion of the Work because of conditions in no way attributable to the Subcontractor, and which by the terms of the Contract Documents may be grounds for an extension of time, then the Subcontractor shall promptly and within the time limitation specified in the Contract Documents, but in no event more than seventy-two (72) hours after the occurrence of such event, make a claim for such extension of time in writing to the Contractor, and the Contractor shall, in its sole and absolute discretion, determine the amount of additional time to be allowed, if any. The additional time shall be the same as shall be allowed by the Owner to the Contractor under the General Contract for the delay. The Contractor's determination of the cause for the delay and additional time necessary shall be final and conclusive subject to review only by way of implementation of the dispute resolution process set forth herein.

11. Assignment and Subcontracts. The Subcontractor shall not assign the Subcontract, or sublet any of the Work, or assign any of the monies due or to become due hereunder, without prior written consent of the Contractor or such assignment shall be void. Assignment by the Subcontractor with written consent shall not relieve the Subcontractor for its responsibility for the performance of the Work in accordance with the contract documents.

12. Performance, Progress and Clean-Up.

- A. The Subcontractor agrees to deliver to the Project Site in advance of its requirements, all necessary materials for commencement of the Work and will immediately proceed with its execution when directed by the Contractor. Subcontractor will carry on the Work with due diligence and, with sufficient workers and at such reasonable times as may be necessary to complete and finish the same in a good and workmanlike manner within the time required by the Contractor in accordance with the applicable schedule for the Subcontractor's Work. The schedule may be modified by the Contractor in its sole discretion. The Subcontractor shall adhere to all jobsite hours of work and specific rules, regulations and restrictions set forth by the Contractor.
- B. Should Subcontractor's delay in progressing its Work cause any damage to Contractor or any damages for which Contractor shall become liable, Subcontractor shall compensate Contractor therefor. If Subcontractor delays the progress of its Work, the Subcontractor shall, at its own cost and expense, work such overtime as may be necessary to avoid delay in the completion of the General Contract. Contractor's determination that Subcontractor is required to work on an overtime basis or with additional workers so that the project schedule is maintained shall be binding and conclusive on the Subcontractor. If requested by the Contractor, the Subcontractor shall work overtime, a second shift and on Saturdays and Sundays (Overtime Work). If in the judgment of the Contractor such Overtime

Work is necessary because of delays of the Subcontractor, such Overtime Work shall be performed by the Subcontractor at its sole expense and without any additional cost to the Contractor. Otherwise, the Contractor shall pay only the actual extra cost over the rate for regular time of such Overtime Work. Time slips covering such Overtime Work shall be subject to inspection and approval by the Contractor. In no event shall overhead or profit be charged by or allowed to the Subcontractor for any Overtime Work.

- C. Should the Subcontractor fail or refuse to proceed with the execution of its Work in a timely manner or should it at any time become insolvent, or refuse to follow the plans, drawings and specifications applicable to its Work, or to perform the Work in a good and workmanlike manner, or cause stoppage of the work of the Contractor, its other subcontractors or other trades working on the Project, or fail to comply in any other respect with any of the material terms of this Subcontract, then the Contractor, may, after giving forty-eight (48) hours written notice of such failure, neglect, default, interference, or breach of contract to the Subcontractor with a demand that the same be cured within such time period, terminate Subcontractor's performance of the Work if Subcontractor has failed to cure the matter within such time period. Notwithstanding the foregoing, if for any reason the Work is periodically interrupted in such a manner that the Contractor determines that the Work is not being carried on continuously in a good and workmanlike manner by the Subcontractor and in accordance with the Contractor's schedule for such Work, the Contractor may immediately by notice to the Subcontractor terminate Subcontractor's performance of the Work, Upon the termination of Subcontractor's performance of the Work, Contractor may require Subcontractor to immediately vacate the Project Site and remove all of Subcontractor's equipment or the Contractor may enter into and take possession of the said site and work, materials, tools and equipment and workers (to the extent permitted by applicable law) for purposes of completing the Subcontractor's Work. Subcontractor agrees that it will deliver and turn over to Contractor all necessary materials, contracts, bills of lading for materials en route and any other information that would tend to lessen the cost of completion of the Subcontractor's Work. The Contractor may provide such other materials, equipment, replacement subcontractors and workers as may be necessary or appropriate to complete the Work, and the expenses incurred by the Contractor in performing all of the foregoing and completing the Work shall be deducted from the amount due or to become due the Subcontractor. If the expenses of completing the Work are more than the amount due, then the Subcontractor shall pay to the Contractor the difference between the balance of the Subcontract Sum specified in the Subcontract and the expenses incurred by the Contractor in completing the balance of the Work. The Contractor may hold, sell or otherwise realize upon any material, machinery, tools or other equipment upon the premises on account of such difference if Subcontractor fails to pay the same.
- D. Without limiting the generality of the foregoing, upon notice to the Subcontractor, the Contractor may employ such other or additional workers and purchase such other and additional materials as may be necessary or required, in the Contractor's determination, to complete the Work in accordance with the plans, drawings and specifications for such Work all at the cost and expense of the Subcontractor, and the Contractor is hereby empowered so to do as often as it may deem necessary in order to complete the Work. No such action on the part of the Contractor shall

operate to modify or void this Subcontract or release the Subcontractor from liability under this Subcontract and nothing contained herein shall release the Subcontractor from liability for damages for delay in completing the Work within the time herein provided.

- E. The Subcontractor shall not interfere with or impede any other subcontractor, materialman, supplier or person doing work with respect to the Project, nor shall the Subcontractor in any way cause any interruption in the progress of the General Contract work.
- F. The Subcontractor shall bear the cost of all damage caused by it, its agents or subcontractors to the work of other contractors and shall repair all damage to adjoining streets, sidewalks, utilities and premises caused by the Subcontractor, its agents and subcontractors. The Subcontractor shall be directly responsible to any other contractor, subcontractor or person whose work is so damaged. If the Work of the Subcontractor is damaged by another contractor, subcontractor or other person, such other contractor, subcontractor or person shall be directly responsible to the Subcontractor, and the Subcontractor shall not seek compensation or damages from the Contractor by reason thereof and all rights of the Contractor against such other contractor, subcontractor or person for damages caused to the Subcontractor are hereby assigned to the Subcontractor; provided, however, that no such assignment shall diminish any direct claim that the Contractor has against such other contractor, subcontractor or other person.
- G. The Subcontractor shall procure materials, supplies and services from such sources and employ labor subject to such terms and conditions as will result in harmonious labor-management relations at the Project Site. In the event of nonpayment by the Subcontractor or by any of its subcontractors of any and all wages and fringe benefits required by any applicable agreement with any Union, the Contractor, at its option and without waiver of any other rights and remedies available to it, may treat such event as a material breach of this Subcontract.
- H. Subcontractor shall clean up and remove from the Project Site all debris caused by the Subcontractor's operations, and remove unnecessary machinery and equipment, as often as requested by Contractor so that the Project Site will be free of obstructions and hindrances. At the conclusion of the Work, Subcontractor shall clean up and leave the Project Site in a neat condition. Interior portions of buildings shall be left in a broom-clean condition. Should Subcontractor fail to clean up and remove from the Project Site all debris as required by this Subcontract, Contractor shall have the right to perform such work. In the event Contractor performs such work, Contractor shall be entitled to charge Subcontractor (or the Subcontractor shall pay the same to the Contractor) the cost of such work together with an additional charge of fifteen percent (15%) to cover the Contractor's overhead and profit.

13. Insurance.

- A. Before a Subcontractor does any work at or delivers materials to the Project Site, Subcontractor shall provide to Contractor certificates of insurance and copies of the actual policies upon request evidencing the following coverages:

- i) **Workers' Compensation and Employers' Liability Insurance:** As required by Statute and/or Regulation. Exclusions for the Proprietor/Partners/Executive Officers will not be permitted. Must include waiver of subrogation.
  - ii) **Comprehensive Automobile Liability:** Including owned, non-owned, leased and hired automobiles with a limit of not less than \$1,000,000, per accident combined single limit for bodily injury and property damage.
  - iii) **Commercial General Liability:** Insurance for liability due to personal injury, bodily injury or property damage sustained or alleged to have been sustained by any person or entity, using GL policy form CG 000110 10/93 or its strict equivalent, with the following limits:
 

1. General Aggregate	\$2,000,000
2. Products and Completed Operations Aggregate	\$2,000,000
3. Personal & Advertising Injury	\$1,000,000
4. Each Occurrence	\$1,000,000
  - iv) **Umbrella Liability:** With limit of not less than \$4,000,000 each occurrence and in the aggregate.
  - v) **NOTE:** The Contractor requires a total of \$5,000,000 per occurrence and aggregate limits. This total can be achieved by a combination of commercial general liability and umbrella liability coverage.
- B. All coverage shall be on an Occurrence Form and include Blanket Contractual Liability coverage. Claims-made coverage is not acceptable. General Aggregate limit must apply separately to each project.
  - C. There shall be no exclusion for Bodily Injury or Property Damage arising out of Exterior Insulation Finish System ("EIFS") work and must be noted on certificate of insurance that no EIFS exclusion applies.
  - D. **Builders Risk Insurance:** Will be maintained by the Contractor or Owner and cover direct physical damage to the work on a "special form". This is subject to the terms, conditions, exclusions, deductibles, etc., of the policies.
  - E. Endorsements must be furnished for all policies of insurance, except workers' compensation, reflecting the inclusion of the interests of Contractor, Owner any other parties requested by Contractor or Owner, as named ADDITIONAL INSUREDS for bodily injury or property damage, using form CG2010 11/85 or CG2010 10/01 plus CG2037 10/01, arising out of or in connection with the Subcontractor's work, including but not limited to coverage for the acts or omissions of Contractor. Coverage is to be endorsed to reflect that insurance is to be primary for Contractor and Owner, that the limits will be exhausted before any other insurance is to apply and that any other insurance maintained by Contractor and Owner is excess. A copy of policy endorsement(s) and any other documents required to verify such insurance are to be submitted with the appropriate certificates. In the event Subcontractor is unable to procure endorsements to the policy providing primary and noncontributing coverage, subcontractor shall provide an Owners and Contractors Protective, or OCP, policy at its own expense,

in the amount of \$2,000,000.00 aggregate and \$1,000,000.00 each occurrence naming the Contractor and the Owner as the INSURED. OCP shall be scheduled on subcontractor's umbrella policy (endorsement to be provided with certificate of insurance). There shall be no endorsement or modification of the subcontractors CGL policy arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors. Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain completed operations coverage for itself and each additional insured for at least 2 years after completion of the Work.

- F. A certificate of insurance acceptable to Contractor must be furnished and received by Contractor reflecting the inclusion of the interests of Contractor and Owner as ADDITIONAL INSUREDS before any of Subcontractor's Work is performed on a Project.
- G. A certificate of insurance on approved form must be delivered to Contractor and must, state coverage will not be altered, canceled or allowed to expire without thirty (30) days written notice by registered mail to Contractor.
- H. Should the Subcontractor engage a sub-subcontractor, the same conditions will apply under this contract to each sub-subcontractor. The Subcontractor shall be responsible for securing certificates of insurance and endorsements/policies where necessary from all sub-subcontractors for insurance coverage limits not less than the limits indicated above and shall make such documents available to Contractor upon request.
- I. It is understood and agreed authorization is hereby granted to Contractor to either terminate the Subcontract or withhold payments to the Subcontractor until properly executed certificates of insurance providing insurance as required herein are received by Contractor.
- J. All insurance must be with insurance companies licensed in the State of New York and otherwise acceptable to Contractor.
- K. It is understood and agreed that the insurance coverage and limits, required below, shall not limit the extent of the Subcontractor's responsibilities and liabilities specified within the Contract Documents or by law.
- L. ALL POLICIES Shall Contain The Following:
  - i) A Waiver of Subrogation in favor of the Contractor and Owner.
  - ii) The use of self-insured retentions or deductibles will not be allowed unless specifically approved by Contractor.
- M. If higher limits, broader provisions or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements. Contractor retains the option of requiring the Subcontractor to supply certified copies of any insurance policies. If Subcontractor fails to procure and maintain any insurance coverage required by this Agreement Contractor may procure such insurance and charge the expense to Subcontractor, or Contractor may terminate this Agreement, Contractor's failure to enforce any of the provisions of this Section

shall not act as a waiver of the Subcontractor's obligation to procure the required insurance or as a waiver to enforcement of any of these provisions at a later date.

- N. The Subcontractor waives all rights against (i) Contractor and any of its subcontractors, sub-subcontractors, agents and employees, and (ii) the Owner, the architect, the architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the General Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

14. Safety.

- A. The Subcontractor shall be solely responsible for the safety of its Work and for the safety of its agents, employees, materialmen, subcontractors and any entity working on behalf of the Subcontractor. The Subcontractor, its agents, employees, materialmen and subcontractors will perform all work on the Project in a safe and responsible manner. In particular, Subcontractor shall, at its own expense, strictly adhere to all Federal (including but not limited to OSHA), State and Local safety and environmental standards, rules and regulations required or recommended by governmental and quasi-governmental authorities having jurisdiction. The Subcontractor hereby acknowledges that it has its own safety program for all work covered by or performed under the Subcontract. The Subcontractor agrees to conduct its own frequent and regular inspections of all work covered by or performed under this Subcontract at the project site to verify compliance with the Subcontractor's safety program and all applicable safety standards, rules and regulations. The Subcontractor and Contractor acknowledge and agree that the Contractor has no control, responsibility or authority over the Subcontractor or the Subcontractor's employees or subcontractors with regard to the safety and health conditions relating to or arising out of the Subcontractor's work or the performance of any work covered by this Subcontract. The Subcontractor has the sole responsibility and authority for ensuring that any and all hazardous conditions relating to or arising out of the Subcontractor's work are correct. Subcontractor shall comply with the above-referenced requirements, standards and regulations, and require and be directly responsible for compliance therewith on the part of its agents, employees, materialmen and subcontractors; and shall directly receive, respond to, defend, and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its agents, employees, materialmen or subcontractors to so comply. Contractor reserves the right, in its reasonable discretion, to withhold payments and/or terminate the Subcontractor's performance of the Work should Subcontractor not meet safety standards as required by law.

- B. The Subcontractor shall immediately notify Contractor of any accident or occurrence resulting in damage to property of another or injury to the Subcontractor's employees or to third parties. The Subcontractor shall submit to Contractor a written report of the accident or occurrence on a form furnished by or acceptable to Contractor. Upon request of Contractor, Subcontractor shall furnish Contractor with a copy of any and all reports prepared by Subcontractor including those for submission to Subcontractor's insurance company(ies).
- C. Should the Subcontractor in any way cause any damage to Contractor or in any way cause damages for which Contractor shall become liable, including fines, penalties or any fees associated therewith, the Subcontractor shall compensate Contractor therefor. Subcontractor further agrees to defend, indemnify, and hold harmless Contractor for any and all claims, losses, or damages incurred as a result of Subcontractor's noncompliance herewith.
- D. The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (i) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (ii) where the Subcontractor fails to perform its obligations under this Section 13, except to the extent that the cost and expense are due to the Contractor's willful misconduct or gross negligence.

15. Bond. If set forth in the Subcontract, the Subcontractor shall furnish a Performance Bond and Payment Bond each in an amount equal to the full subcontract price. Such bonds shall be in a form satisfactory to Contractor and shall be executed by a corporate surety who is listed on the United States Treasury list and is acceptable by Contractor. The premium on such bonds will be paid by Subcontractor unless otherwise provided herein. If Contractor demands such bonds, Subcontractor shall not commence/continue any work until it has furnished same as required hereunder. If the Subcontractor fails to provide the bonds as requested, such will constitute a total breach of the Subcontract, giving Contractor the right to terminate this Subcontractor's performance of the Work without any liability of any kind to Subcontractor.

16. Indemnification/Contribution.

- A. The Subcontractor agrees to protect and save harmless the Contractor and the Owner against any claim or demand for patent fees, royalties, or otherwise on account of any inventions, machine, article, process or arrangement that may be used by the Subcontractor in the construction of the Work, and defend any and all actions arising out of same, and pay reasonable attorneys' fees and expenses of all kinds whatsoever in connection therewith; and further, in the event of any injunction or legal action serving to stop the Work, the Contractor shall have the privilege of substituting such other articles of like kind and/or directing Subcontractor to change the manner of performance of this Subcontract in order to facilitate completion of the Work, and all cost and expense occasioned thereby shall be borne by the Subcontractor.
- B. The Subcontractor shall protect, defend, hold harmless and indemnify Contractor and Owner and their agents and employees from and against all actions, claims, liability, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such action, claim, liability, damage, loss or expense is attributable to bodily injury, sickness,

disease or death, caused in whole or in part by acts or omissions of the Subcontractor, its subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. This provision does not obligate the Subcontractor to indemnify Contractor for the actual negligence or breach of duty by Contractor. However, in the event liability is shared by the parties to this Agreement, the Subcontractor shall contribute in the amount of its proportionate share for all actions, claims, liability, damages, losses, expenses or judgments.

- C. The Subcontractor hereby assumes entire responsibility for any and all damage or injury of any kind or nature to property, including adjoining property (including loss of use thereof), caused by or resulting from the execution of the Work occurring in connection therewith, and agrees to defend, indemnify and save harmless Contractor and Owner for damages or injury to such property, however such damages or injury may be caused, whether such claims, liabilities, damages, loss or expense arise from or are caused directly or indirectly by: (i) the negligence of the Subcontractor or any sub-subcontractors, or the agents or employees of either of them, in the performance of the Work, or the use by the Subcontractor or any Sub-subcontractor, or the agents or employees of either of them, of any materials, tools, hoists, ladders, implements, appliances, scaffolding, ways, works, machinery or other property; or (ii) any other manner. This provision does not obligate the Subcontractor to indemnify Contractor for the active or passive negligence or breach of duty by Contractor. The Subcontractor shall be solely responsible for the safety of its work and all equipment and materials to be used therein until final completion and acceptance of the same and shall promptly at its own expense repair any damage or injury to same, unless such damage or injury is caused by the sole negligence of Contractor. However, in the event that liability is shared by the parties to this Agreement, the Subcontractor shall contribute in the amount of its proportionate share for all actions, claims, liability, damages, losses, expenses or judgments.
- D. The Subcontractor specifically agrees to provide indemnification to the Contractor and Owner as contemplated in the Omnibus Workers' Compensation Reform Act of 1996, enacted on September 10, 1996, for any and all loss or liability arising from injury to or death of any employee, representative, agent or invitee of Subcontractor.
- E. It is further agreed that, if the Subcontractor subcontracts or delegates to others Work or any part thereof, the Subcontractor will have the sub-subcontractors and/or delegates agree to indemnify and insure Contractor and Owner in the same manner as the Subcontractor has agreed to indemnify and insure Contractor and Owner under this Agreement and shall deliver a true copy of said Agreement to Contractor. In the absence of such agreement or the delivery of same prior to the sub-subcontractors or delegates commencing their work, the Subcontractor will be held liable to indemnify and insure Contractor and Owner in the same manner and to the same extent that the sub-subcontractors and/or delegates would have been required to indemnify and insure Contractor and Owner if such agreement had been made.
- F. The Subcontractor's requirements of indemnity under this Agreement shall be read cumulatively, and no paragraph of indemnity shall be read so as to restrict in any way any other paragraph of indemnity. The purpose of these indemnity paragraphs

is to give Contractor and Owner the greatest right of indemnity against the Subcontractor allowed by the law.

- G. The Subcontractor's indemnification obligations hereunder apply to any type of damages, compensation or benefits payable by or for the Subcontractor under Workers Compensation Acts or other Employee Benefit Acts. The Subcontractor's indemnification obligations also apply to any claim asserted against the Contractor or Owner of the Project in actions brought by injured employees of the Subcontractor (or the Spouse, children, dependents or heirs of such employees) or his subcontractors against the Owner or Contractor. Subcontractor agrees that all such liabilities and accompanying costs (including, but not limited to, reasonable attorneys' fees and disbursements) shall be borne by Subcontractor.
- H. The Subcontractor agrees, upon request of the Contractor or the Owner, to assume the defense of any claim or lawsuit against either or both involving any claim covered by this paragraph and to pay the amount of any judgment which may be entered against the Contractor or the Owner. Contractor reserves the right to choose legal counsel to be used by the Subcontractor. Upon failure of the Subcontractor to assume the defense of any such suit or upon a determination of the Owner and/or Contractor to defend the same with separate counsel, the Subcontractor shall indemnify and hold harmless the Contractor and/or the Owner against all expenses, including reasonable attorneys' fees and disbursements, of such litigation.
- I. The Subcontractor shall also indemnify Contractor and Owner for any and all indemnification obligations to municipalities, regulatory and governmental agencies and any other such entities which arise out of or pertain to the Work.
- J. The indemnity provided by the requirements contained herein shall be in addition to and not in limitation upon any rights of common law indemnity.

17. Taxes. The Subcontractor agrees to pay any tax imposed by the Federal Government, and State or subdivision thereof or any local government on any materials, articles or services required to be furnished by the Subcontractor hereunder, other than taxes imposed on the Owner, and for the payment of all contributions, taxes or premiums which may be payable or required under any law, including, but not limited to, unemployment insurance or Federal Social Security.

18. Mechanic's Liens. In the event any subcontractor, materialman or Supplier of the Subcontractor shall file a mechanic's or other lien with respect to the Project, the Subcontractor shall discharge the same by bonding or otherwise within fifteen (15) days of the date such mechanic's or other lien is so filed. In the event that the Subcontractor breaches said obligation, the Contractor shall have the right to discharge the same by bonding or otherwise and the cost (including reasonable attorneys' fees and disbursements) incurred by the Contractor shall be paid by the Subcontractor. Any costs so incurred by the Contractor may be deducted from sums owed by the Contractor to the Subcontractor under this Subcontract.

19. Miscellaneous. Subcontractor further agrees as follows:

- A. *Construction Office.* Subcontractor shall furnish all temporary offices, sheds and tool houses, if any, required in the execution of the Work, except as otherwise expressly provided. The Subcontractor must obtain approval of the Contractor for

the design and location of all temporary facilities and for the placing on the site of all materials, equipment, etc.

- B. *Materials Ordering.* Subcontractor, in making or ordering shipments, shall not consign materials in the name of Contractor. Contractor shall have the right to designate the carrier or railroad over which all materials required for the Work shall be shipped, provided that Subcontractor's costs are not increased thereby. Subcontractor shall assume all transportation taxes on materials and equipment furnished under this Subcontract.
- C. *Decisions Governed by General Contract.* Subcontractor shall be bound by any decision rendered under the provisions of the General Contract applying to the Work, provided Subcontractor is given an opportunity to present Subcontractor's position to the extent permitted by the General Contract.
- D. *Compliance with Laws and Regulations.* Subcontractor, in the performance hereof, agrees to comply with all applicable Federal, State and local laws, rules, standards and regulations.
- E. *Choice of Law and Forum for Disputes.* The Subcontract including these Terms and Conditions shall be deemed to have been made in and governed by the substantive laws of the State of New York, without regard to choice-of-law provisions. Any dispute concerning the Subcontract and/or the Work may only be litigated in the courts in Monroe County, New York, and Contractor expressly consents and submits to the jurisdiction of said courts.
- F. *Right of Offset.* Contractor may, in its sole discretion, offset and otherwise apply any amount that Subcontractor owes or may owe to Contractor against and so as to reduce any amount that Contractor owes to Subcontractor as set forth herein.
- G. *Non-Discrimination.* Subcontractor will not in any way discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, handicap, a veteran's disability for being a veteran of the Vietnam era, except where sex, handicap, or disability is a bona fide occupational qualification or limitation.
- H. *Non-Waiver.* Contractor's failure to enforce any of the provisions of this Subcontract shall not act as a waiver to enforcement of any of these provisions at a later date.
- I. *Guaranties and Warranties.* All guaranties, warranties and bonds of and for material and workmanship running in favor of the Subcontractor shall be assigned to the Owner on or before completion of the Work.
- J. *Entire Agreement.* These Terms and Conditions, with the Subcontract and Contract Documents, constitute the entire agreement between Contractor and Subcontractor relating to the Work at the Project.
- K. *Partial Invalidity.* If any term or condition or part of these Terms and Conditions or the Subcontract is held by a court of competent jurisdiction

to be invalid, illegal or unenforceable in any respect, the remaining terms and conditions hereof shall not be affected thereby and the effect thereof shall be confirmed to the provisions as to which such adjudication is made.

- L. *Binding Effect.* These Terms and Conditions with the Subcontract shall be binding upon the successors, legal representative, and permitted assigns of Contractor and Subcontractor.
- M. *Modification.* These Terms and Conditions may not be modified, cancelled, or assigned unless Contractor and Subcontractor agree in writing.
- N. *Recovery of Litigation Costs.* In the event of any legal proceedings related to the Subcontract (including these Term and Conditions) and/or the Work performed by Subcontractor, the prevailing party in any such legal proceedings shall be entitled to recover from the other party its costs of such proceedings including reasonable attorney's fee and costs.
- O. *Section and Paragraph Headings.* Section and paragraph headings are for ease of reference only and shall not be used to construe, interpret or alter these Terms and Conditions any Subcontract to which they pertain.

End of Subcontract General Terms of Conditions.

MALVERN BUILD, LLC

Effective as of May 26<sup>th</sup>, 2026