

EXHIBIT B-1
SUBCONTRACTOR ADDENDUM
GENERAL TERMS AND CONDITIONS

[Exhibit B-1 is a placeholder for the RFQ (or similar) process, as contemplated in Section 2.1.2 of the MSA.]

[When a PWO is executed, these terms & conditions should be marked as "Exhibit B-2"]

1. **OBLIGATIONS IN A PRIME AGREEMENT** From time to time, Constructor will have entered into a prime agreement. If Constructor has entered into a prime agreement, then Subcontractor assumes toward Constructor all the obligations, rights, and duties that Constructor assumes toward Owner under said prime agreement, as involving the Subcontract Work.

2. **RESPONSIBILITIES** Unless otherwise set forth in the PWO, Subcontractor shall furnish all the labor, materials, equipment, and services necessary for the proper performance of the Subcontract Work, all of which shall be provided as expressly required by and reasonably inferable from the Subcontract Documents.

3. **WORKSITE VISITATION** Before mobilization and before beginning to perform the Subcontract Work, Subcontractor shall carefully examine and compare: **(a)** the Subcontract Documents, relevant; **(b)** field measurements—whether made by Subcontractor or shared by Constructor; and **(c)** any visible conditions at the Worksite affecting the Subcontract Work. If Subcontractor discovers inconsistencies, or errors or omissions, Subcontractor shall promptly report the same in writing to Constructor, after which Constructor shall instruct Subcontractor as to the action to be taken. Subcontractor shall comply with Constructor's course of action. The obligations in this Section 3 are not mere formalities but are material to the parties' relationship.

4. **ADDITIONAL REPORTING** In performing the Subcontract Work, Subcontractor shall continue to carefully examine and compare the Subcontract Documents affecting the Subcontract Work. If Subcontractor discovers inconsistencies, or error or omission, Subcontractor shall promptly report such discoveries to Constructor in writing, after which Constructor shall instruct Subcontractor, in writing, as to the action to be taken. Subcontractor shall comply with Constructor's course of action. The obligations in this Section 4 are not mere formalities but are material to the parties' relationship.

5. **INCREASES IN SUBCONTRACT AMOUNT OR TIME**
If Constructor's clarifications or instructions relating to the Subcontract Work, including requests contained in Subcontractor's reports or Constructor's instructions, as contemplated under Sections 3 or 4, above, then Subcontractor may request an increase in the Subcontract Time or Subcontract Amount, but only if reasonably and necessary warranted—with supportable documentation and information to be provided by Subcontractor to

Constructor. Determination of the same shall be made by Constructor—which, Constructor's discretion, may include Constructor's consultation with its Design Professional(s). Although collaboration between Constructor and Subcontractor is welcomed and encouraged, Constructor's determination shall be binding.

If Subcontractor knowingly, recklessly, or negligently fails to perform the reviews and comparisons—and/or knowingly, recklessly, or negligently fails to provide the reports—required in Sections 3 and 4, above, then Subcontractor shall pay the resulting damages caused to the Project or Constructor.

6. **COMMUNICATIONS** Except in the case of emergency, or where the safety of persons or property may be imminently, adversely affected, Subcontractor shall direct all Project-related communications to Constructor's authorized representative, i.e., Constructor's signatory to the MSA and/or as otherwise set forth in the applicable PWO.

7. **COORDINATION** Subcontractor shall cooperate with Constructor and others whose work may interface with the Subcontract Work. To the extent the Subcontract Work interfaces with the work of others, Subcontractor shall provide Constructor with written notice of the same. As part of its existing obligations in performing the Subcontract Work, Subcontractor shall coordinate participate with Constructor and other project participants as to scheduling and other elements of Work at the Project.

8. **SUBCONTRACTOR'S REPRESENTATIVE** Subcontractor's authorized representative, as set forth in the MSA and/or in the applicable PWO, shall possess full authority to receive and act upon instructions, orders, or directions from Constructor's authorized representative. If Subcontractor changes its representative or its representative's authority, Subcontractor shall immediately notify Constructor in writing. Unless otherwise agreed to between the parties, Subcontractor's authorized representative shall also act as Subcontractor's designated safety representative responsible for overseeing the safety program(s) set forth in Section 12, below. Such safety representative shall conduct Worksite safety meetings as to the Subcontract Work, and, if requested by Constructor, shall attend and participate in coordinating safety meetings regarding the Work at the Project.

9. **TESTS AND INSPECTIONS** If any tests, approvals, and inspections of the Subcontract Work are necessary, Subcontractor shall schedule the same at appropriate times so as not to delay

the progress of the Work. Subcontractor shall give proper written notice to Constructor regarding all required tests, approvals, and inspections. Except as otherwise provided in the Subcontract Documents or any applicable PWO, Subcontractor shall bear all expenses associated with such tests, approvals, and inspections. All certificates or other reports of such tests, approvals, and inspections shall be promptly delivered to Constructor.

10. WARRANTIES; NO SUBSTITUTIONS As set forth in the MSA and any applicable PWO, Subcontractor shall perform the Subcontract Work: **(a)** in a good and workmanlike manner and otherwise in accordance with the standard of professional skill and care required for a project of similar size, location, scope, and complexity during the timeframe in which the Subcontract Work is provided. Subcontractor further warrants **(b)** that all materials and equipment shall be **(i)** new, unless otherwise specified in a writing, acknowledged and signed by the Constructor; **(ii)** of good quality, unless otherwise specified in a writing, acknowledged and signed by the Constructor; and **(iii)** otherwise in conformance with the Subcontract Documents. Subcontractor further warrants **(c)** that its Subcontract Work will be free from defective workmanship and materials. No substitutions shall be made as to materials or equipment required in the performance of the Subcontract Work, unless permitted by Constructor in a signed writing. Subcontractor further warrants **(d)** that the Subcontract Work shall be free from material defects not intrinsic in the Project design or the materials and/or equipment required by the Subcontract Documents. Subcontractor's warranty does not include, however, remedies for defects or damages caused by normal wear and tear during normal usage; use for a purpose for which the Project was not intended; improper or insufficient maintenance; modifications performed by Constructor or others; and abuse. Subcontractor's warranties shall commence on the date the Subcontract Work is complete and accepted by Constructor. Unless otherwise required in a prime agreement, Subcontractor's duty to correct any Subcontract Work in violation of the above warranties shall continue for two (2) years from the date the Subcontract Work is completed and accepted by Constructor.

11. CLEANUP Subcontractor shall at all times during its performance of the Subcontract Work keep the Worksite clean and free from debris resulting from the Subcontract Work. Before discontinuing the Subcontract Work in an area, Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. If Subcontractor fails to comply with the cleanup duties in this section, within two (2) Business Days after written notification from Constructor of non-compliance, Constructor may implement appropriate cleanup measures without further notice and shall deduct the reasonable costs from any amounts otherwise due Subcontractor in the next payment period.

12 SUBCONTRACTOR SAFETY PROGRAMS

12.1 Prevention of accidents at the Worksite is the shared responsibility of all project participants, and Subcontractor is required, at all times, to perform and oversee the Subcontract Work in a safe and reasonable manner—including, but not limited to, by familiarizing itself with and carefully reviewing Constructor's safety plan—*Resound's Health & Safety Plan—Occupational Technical Manual*; and by developing its own safety plan for the Subcontract Work. Subcontractor therefore acknowledges: **(a)** access to and receipt of *Resound's Health & Safety Plan—Occupational Technical Manual*; and, prior to commencing any Subcontract Work, **(b)** that its employees and subcontractors, as applicable, have: **(i)** read *Resound's Health & Safety Plan—Occupational Technical Manual*; and **(ii)** agreed to scrupulously observe the same, as well as Subcontractor's safety program.

12.2 In establishing its own safety program, Subcontractor should take care not to create conflicting standards or obligations when compared with *Resound's Health & Safety Plan—Occupational Technical Manual*. To the contrary, Subcontractor agrees to establish a safety program tailored to the specific Subcontract Work—i.e., with greater specificity and more stringent requirements than *Resound's Health & Safety Plan—Occupational Technical Manual*. In the case of any potential conflict between or questions regarding *Resound's Health & Safety Plan—Occupational Technical Manual*, Subcontractor shall promptly notify Constructor in writing and discuss the same with Constructor. All questions or concerns relating to *Resound's Health & Safety Plan—Occupational Technical Manual* shall be directed to Constructor's authorized representative for the applicable PWO.

12.3 The fact of Constructor's safety program shall in no way relieve Subcontractor of its own safety responsibilities. In establishing its own safety program as to the Subcontract Work, Subcontractor shall implement safety measures, policies, and standards conforming to those required or recommended by governmental and quasi-governmental/agency authorities having jurisdiction over the Project—whether federal, state, or local authorities. Subcontractor shall further comply with the reasonable recommendations of any surety or insurance companies having an interest in the Project, if any, and shall stop any part of the Subcontract Work which Constructor deems unsafe until corrective measures satisfactory to Constructor and Subcontractors shall have been taken. Subcontractor's safety program pertaining to the Subcontract Work may include, as applicable: the implementation of safety rules; posting appropriate notices and warnings; erecting safety barriers; and establishing and implementing other reasonable safety measures and procedures to protect persons and property at the Worksite and adjacent to the Worksite, including materials and equipment stored for performing the Subcontract Work (whatever located), from injury, loss, or damage. Subcontractor shall promptly give Constructor notice

of and shall comply with any and all applicable Law established to prevent such injury, loss, or damage. Constructor's authority or failure to stop any part of the Subcontract Work, if any, because of an unsafe practice involving the Subcontract Work, does not relieve Subcontractor of its responsibilities under this Section 12. Subcontractor shall notify Constructor immediately following a reportable incident under applicable Law and promptly confirm the notice in writing to Constructor. Regardless of any requirement of Law, Subcontractor's shall give Constructor notice regarding any accident involving bodily injury requiring a physician's care, any property damage exceeding five hundred dollars (\$500.00) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained. A detailed written report shall be furnished if requested by Constructor. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY TO THE MSA AND ANY ACCOMPANYING PWO SHALL INDEMNIFY THE OTHER PARTY FROM AND AGAINST FINES OR PENALTIES IMPOSED AS A RESULT OF SAFETY VIOLATIONS, BUT ONLY TO THE EXTENT THAT SUCH FINES OR PENALTIES ARE CAUSED BY SUCH PARTY'S FAILURE TO COMPLY WITH APPLICABLE SAFETY REQUIREMENTS.** This indemnification obligation extends to additional or increased fines that result from repeated or willful violations not caused by Subcontractor's (or its subcontractors') failure to comply with applicable rules, regulations, orders, and other lawful requirements, if any.

13. SAFETY – STRUCTURES AND CONDITIONS Subcontractor has an affirmative duty not to overload the structures or conditions at the Worksite and shall take reasonable steps not to load any part of the structures or conditions at the Worksite so as to give rise to an unsafe condition or to otherwise create an unreasonable risk of bodily injury or property damage. Subcontractor may request, in writing, loading and other information concerning such structures and conditions.

14. PROTECTION OF THE WORK Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by Subcontractor's operations. Should Subcontractor cause damage to the Subcontract Work or the property of any Owner, Constructor, or other Project participant, Subcontractor shall promptly remedy such damage to the satisfaction of Constructor, or Constructor may, after forty-eight (48) hours' written notice to Subcontractor, remedy the damage and deduct its cost from any amounts due or to become due Subcontractor. (Subcontractor may obtain reimbursement of the same if such costs are recovered under applicable insurance policies.)

15. EMERGENCIES In an emergency affecting the safety of persons or property, Subcontractor shall act to prevent threatened damage, injury, or loss. Any change in the Subcontract Amount or the Progress Schedule from actions of Subcontractor in an emergency situation shall be determined as provided in Article 5

of the MSA. The Subcontract Work shall continue without delay, pending any such determination.

16. PERMITS AND TAXES Subcontractor shall give timely notices required by Law pertaining to the Subcontract Work, and is responsible for all Project-specific permits, fees, licenses, assessments, inspections, testing, and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents. Such costs shall be reimbursable to Subcontractor upon Constructor's receipt of Subcontractor's proof of payment.

17. COMPLIANCE WITH LAWS Subcontractor agrees to comply with the Law at its own cost. Subcontractor shall be liable to Constructor and Owner for all loss, cost, and expense attributable to any acts or omissions by Subcontractor, its employees, subcontractors, suppliers, and agents resulting from the failure to comply with the Law, including any fines, penalties, or required corrective measures. Liability under this section shall not apply if prior written approval by appropriate authorities and Constructor has been furnished to Subcontractor.

18. NO DAMAGES FOR DELAY Subcontractor shall not be entitled to any claim for damages for delay—including damages for accelerations, time impact, extended general conditions, extended field or home office overhead, loss of profits, loss of use, equipment rental—on account of hindrances or delays from any cause whatsoever. Instead, an extension of time shall be Subcontractor's sole and exclusive remedy for any occurrence giving rise to a delay, and Constructor (and Owner) shall be released and discharged of and from any claims for damages which Subcontractor may have otherwise had on account of any cause of delay. Notwithstanding the above, nothing in this article precludes Subcontractor's recovery of delay damages wrongfully caused by Constructor. And to the extent there are other applicable public policy/common law exceptions, the same will be recognized by Constructor, as appropriate.

19. CLAIMS RELATING TO CONSTRUCTOR Subcontractor shall give Constructor written notice of all claims within fourteen (14) Days of Subcontractor's knowledge of the facts giving rise to the claim—unless otherwise prohibited by Law, in which case such notice shall be provided within the minimum time period required by such Law. After Subcontractor's notice of a claim, Subcontractor shall submit written documentation of its claim, including appropriate supporting exhibits, within twenty-one (21) Days, unless the Parties agree upon a longer period of time. Constructor shall respond in writing denying or approving, in whole or in part, Subcontractor's claim no later than twenty-one (21) Days, unless the Parties agree upon a longer period of time, from its receipt of Subcontractor's documentation of claim. Constructor's failure to respond shall be deemed a denial of Subcontractor's claim. All unresolved claims, disputes, and other matters in question between the Parties shall be resolved as provided for in Article 5 of the MSA.

20 PROGRESS PAYMENTS; RESERVED FUNDS; ETC.

20.1 APPLICATIONS. Subcontractor's applications for payment shall be on industry-standard forms or equivalent—e.g., AIA G702-1992 or ConsensusDocs Form 110. Regardless of the form used, Subcontractor shall include itemized, supporting and substantiating data as required by the Subcontract Documents. If Subcontractor is obligated to provide design services, Subcontractor's applications for payment shall show the design professional's fees and any associated expenses as a separate cost item. Subcontractor's application for payment shall be notarized and, if allowed under the Subcontract Documents, may include any properly authorized Interim Directive. Subcontractor's application for payment for Subcontract Work performed in the preceding payment period shall be submitted to Constructor with reference to and in accordance with any applicable schedule of values. As applicable, Constructor shall incorporate the approved amount of Subcontractor's application for payment into its own application for payment to Owner for the same period, which shall be submitted in a timely fashion.

20.2 RETAINAGE/RESERVED FUNDS During the progress of the Subcontract Work, and for thirty (30) days after the Project is finally completed, Constructor may reserve ten percent (10%) of payments otherwise due to Subcontractor. Upon completion of such work, Subcontractor's acceptance of final payment shall constitute a waiver of all claims by Subcontractor for compensation of the Subcontract Work. If the Subcontract Work is satisfactory and, as applicable, a prime agreement provides for reduction of retainage/reserved funds for Constructor, then Subcontractor's retainage/reserved funds shall likewise be reduced, subject to any offsets or non-occurrence of conditions precedent. To the extent not already addressed in the MSA and these General Terms and Conditions, the PWO will expressly define payment terms for the Subcontract Work.

20.3 STORED MATERIALS Unless otherwise provided in the Subcontract Documents, applications for payment may include materials and equipment not yet incorporated in the Subcontract Work but delivered to and suitably stored on or off the Worksite including applicable insurance, storage, and costs incurred transporting the materials to an off-site storage facility. Approval of payment applications for such stored items on or off the Worksite shall be conditioned upon submission by Subcontractor of bills of sale, required insurance, or such other procedures satisfactory to Constructor and Owner to establish Constructor or Owner's title, as applicable, to such materials and equipment, or otherwise to protect Constructor's and Owner's interest including transportation to the Project Worksite.

20.4 TIME OF PAYMENT Progress payments to Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than thirty (60) Days. In the event that Constructor is not also the Project Owner, Constructor shall make payment to Subcontractor when Constructor receives payment from

Owner. If payment is not received by Constructor from Owner, through no fault of Subcontractor, Constructor will make payment to Subcontractor within a reasonable time from Subcontractor's satisfactory performance.

20.5 PAYMENT DELAY If Constructor has received payment from Owner and if for any reason not the fault of Subcontractor, Subcontractor does not receive a payment from Constructor within thirty (60) Days after the date such payment is due, as defined in the subsection immediately above—or, if Constructor has failed to pay Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed—then Subcontractor, upon giving thirty (30) Days' written notice to Constructor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of Subcontractor's reasonable and verified cost of such shutdown, delay, and/or startup. Such adjustment shall be reflected in a Change Order.

20.6 PAYMENTS WITHHELD Constructor may reject a Subcontractor application for payment in whole or in part or withhold amounts from a previously approved Subcontractor application for payment, as may reasonably be necessary to protect Constructor from loss or damage for which Constructor may be liable and without incurring an obligation for late payment interest based upon: **(a)** Subcontractor's repeated failure to perform the Subcontract Work as required by the Subcontract Documents; **(b)** except as accepted by the insurer providing Builders Risk or other property insurance covering the Project, loss or damage arising out of or relating to the PWO and caused by Subcontractor to Owner, Constructor, or others to whom Constructor may be liable; **(c)** Subcontractor's failure to properly pay for either labor, materials, equipment, or supplies furnished in connection with the Subcontract Work, provided that Constructor is making payments to Subcontractor for that portion of the Subcontract Work in accordance with the PWO; **(d)** rejected or defective Subcontract Work which has not been corrected in a timely fashion; **(e)** reasonable evidence of delay in performance of the Subcontract Work such that the Work will not be completed within the Subcontract Time, and that the unpaid balance of the Subcontract Amount is not sufficient to offset the actual damages that may be sustained by Constructor as a result of the anticipated delay caused by Subcontractor; **(f)** reasonable evidence demonstrating that the unpaid balance of the Subcontract Amount is insufficient to cover the cost to complete the Subcontract Work; and **(g)** uninsured third-party claims involving Subcontractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Subcontractor furnishes Constructor with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

20.7 No later than seven (7) Days after receipt of an appropriate application for payment, Constructor shall give written notice to

Subcontractor, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Subcontractor in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

21 SUBSTANTIAL COMPLETION Substantial Completion of the Subcontract Work refers to that phase in the progress of the Subcontract Work when the Subcontract Work is sufficiently complete in accordance with the Subcontract Documents so as to allow Constructor (and/or an Owner, as applicable) to occupy or utilize the Subcontract Work for its intended purpose. When Subcontractor believes it has achieved Substantial Completion, it shall inform Constructor, in writing. The parties—including any design professional(s) or sub-consultant(s)—shall then promptly make inspection. At that inspection, Constructor and/or its design professional(s) or sub-consultant(s) shall prepare a list of items of Subcontract Work to be corrected or otherwise brought in conformance with the Subcontract Documents. Subcontractor shall promptly correct or otherwise complete the items in said list. Once Subcontractor believes such items have been corrected or otherwise completed, as described above, the parties will undergo another inspection. Passing such inspection (or subsequent inspections, if any) shall be an express condition precedent to Subcontractor's final payment; and, unless otherwise provided by the parties in writing, Subcontractor's warranty obligations shall commence upon Constructor's acceptance of the Subcontract Work. Upon Constructor's acceptance of the Subcontract Work, Constructor shall assume responsibility for securing and protecting of the Subcontract Work. However, nothing under this MSA or any PWO shall be construed to mean that Constructor's acceptance of a designated portion of the Subcontract Work *for the purpose of allowing succeeding Subcontract Work to proceed* is when Subcontractor's warranty period begins, unless otherwise agreed in writing.

22 FINAL PAYMENT

22.1 APPLICATION. Upon acceptance of the Subcontract Work by Owner and Constructor and receipt from Subcontractor of evidence of fulfillment of Subcontractor's obligations in accordance with the Subcontract Documents and the subsection below, Constructor shall incorporate Subcontractor's application for final payment into Constructor's next application for payment to Owner without delay, or notify Subcontractor if there is a delay and the reasons for the delay.

22.2 REQUIREMENTS. Before Constructor shall be required to incorporate Subcontractor's application for final payment into Constructor's next application for payment, Subcontractor may be required to submit to Constructor: **(a)** an affidavit that all pay-rolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work have been paid, satisfied,

or are to be paid with the proceeds of final payment, so as not to encumber Owner's property, Constructor, or Constructor's surety; **(b)** as-built drawings, manuals, copies of warranties, startup and testing required, as applicable, and all close-out documents and satisfaction of close-out procedures if required by the Subcontract Documents; **(c)** release of any liens, conditioned on final payment being received, and in such form as may be required by the Subcontract Documents; **(d)** consent of surety to final payment, if required; **(e)** a report of any outstanding accidents or injuries experienced by Subcontractor at the Worksite and not already provided to Constructor; **(f)** other data, if required by Constructor, such as receipts and waivers/releases of liens by downstream subcontractors and/or suppliers of Subcontractor.

22.3 TIME OF PAYMENT Final payment of the balance due of the Subcontract Amount shall be made to Subcontractor within seven (7) Days after receipt by Constructor of final payment from Owner for such Subcontract Work.

22.4 FINAL PAYMENT DELAY If Owner or its designated agent does not issue a certificate for final payment or Constructor does not receive such payment for any cause which is not the fault of Subcontractor, Constructor shall promptly inform Subcontractor in writing. If final payment from Owner for such Subcontract Work is not received by Constructor, through no fault of Subcontractor, Constructor will make payment to Subcontractor within a reasonable time.

22.5 WAIVER OF CLAIMS Constructor's final payment shall constitute a waiver of all claims by Subcontractor relating to the Subcontract Work, including any derivative claims, as applicable, but **shall in no way relieve Subcontractor of liability for:** **(a)** obligations for faulty or defective work or services discovered after final payment; **(b)** applicable warranties; **(c)** claims made in writing by Subcontractor as required by the Subcontract Documents before its application for final payment as unsettled at the time of such payment; and **(d)** any other obligation that survives Subcontractor's completion of the Subcontract Work.

22.6 LATE PAYMENT INTEREST Unless otherwise displaced by Law, progress payments and the final payment due and unpaid under shall bear six percent (6%) simple interest—or half a percent (.5%) per month—from the date when such payment is due. However, if Constructor's failure to pay Subcontractor is due to Owner failing to timely pay Constructor as required under the prime agreement—through no fault or neglect of Constructor (or Subcontractor)—and Constructor fails to timely pay Subcontractor as a result of such nonpayment, Constructor's obligation to pay interest on corresponding payments due and unpaid shall be extinguished with Constructor promptly paying Subcontractor the principal amount owed on or within seven (7) days from its own receipt of payment.

22.7 CONTINUING OBLIGATIONS Provided Constructor is making payments in accordance with the PWO, Subcontractor shall reimburse Constructor for costs and approved expenses for any lien, claim, or other obligation asserted before or after final payment is made arising from the performance of the Subcontract Work. Subcontractor shall reimburse Constructor for costs and expenses—including attorney's fees, expert fees, courts costs and other similar expenses incurred by Constructor in satisfying, discharging, or defending against any such claim, obligation, or lien, including any action brought or judgment recovered. If any Law or bond requires, Subcontractor to take any action before the expiration of the reasonable time for payment hereunder—i.e., in order to preserve or protect Subcontractor's rights with respect to mechanic's lien or bond claims—then Subcontractor may take that action before the expiration of the reasonable time for payment and such action will not: **(a)** create the reimbursement obligation recited above, **(b)** be in violation of the Subcontract Documents, or **(c)** be considered premature for purposes of preserving and protecting Subcontractor's rights.

22.8 PAYMENT USE RESTRICTION Payments received by Subcontractor shall be used to satisfy the indebtedness owed by Subcontractor to any person—e.g., Subcontractor's subcontractor or supplier—in performing the Subcontract Work through the most current period applicable to progress payments received from Constructor *before* such payments are used for any other purpose. In the same manner, payments received by Constructor for the Subcontract Work shall be dedicated to payment to Subcontractor. This applies to the Subcontract Work only, and is not for the benefit of any third party. Moreover, this section does not restrict commingling funds nor require separate accounts for deposits. Nothing in this section creates a fiduciary duty on the Parties, nor creates any tort cause of action or liability for breach of trust, punitive damages, or other equitable remedy or liability for alleged breach.

22.9 PAYMENT VERIFICATION If Constructor has reason to believe that Subcontractor is not complying with payment terms in the Subcontract Documents, Constructor may contact Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by Subcontractor in accordance with the Subcontract Documents. At Constructor's sole discretion, payments to Subcontractor and its subcontractors/suppliers may be made via joint check. Constructor may require a formal joint check agreement among Constructor, Subcontractor, and Subcontractor's subcontractors/suppliers, as applicable. Subcontractor shall sign and cooperate in obtaining the necessary signatures of its subcontractors/suppliers.

22.10 MECHANIC'S LIEN/BOND-CLAIM WAIVERS Constructor is entitled to a lien-free (or bond-claim free) Project. As a condition precedent to Constructor's payments to Subcontractor, Subcontractor shall execute waivers/releases of mechanic's liens/bond claims, as provided by Law; or, if the form of such waivers/releases is not provided by Law, the forms set forth in

Section 53.284 of the Texas Property Code may suffice. (Said forms are available [here](#) or [here](#).) Upon receipt of payment from Constructor, Subcontractor shall promptly make payment to its subcontractors/suppliers. To the extent Subcontractor has made application for payment that includes all or a portion of the Services/Additional Services performed by its subcontractor(s)/supplier(s), payments made to Subcontractor to that extent shall be considered construction trust funds, as set forth in [Section 162.001, et seq.](#) of the Texas Property Code; and, to the extent there is a bona fide payment dispute between Subcontractor and its subcontractor(s)/supplier(s), Subcontractor shall inform Constructor of the same, in writing. In turn, Constructor may, in its sole discretion, reasonably forbear from what would otherwise be a breach of contract by Subcontractor for failure to pay one or more sub-consultants, which forbearance shall allow Subcontractor to resolve the same with its subcontractor(s)/supplier(s). However, if the dispute is not resolved within a reasonable time, Subcontractor shall indemnify the Project from any and all mechanic's liens/bond claims through the applicable indemnity bond provisions—e.g., as provided under Chapter 53 of the Texas Property Code, Subchapter H, *Bond, to Indemnify Against Lien* (§§ 53.171 to 53.176). In the event that the Texas Property Code is inapplicable due to the Law of another applicable jurisdiction—and there is other/equivalent Law that would apply to the statutes cited in this § 22.10—then such Law shall apply. However, to the extent such other/equivalent Law does not provide the same processes and remedies set forth in the Texas Property Code, as cited herein, then such provisions of the Texas Property Code, as cited herein, shall be contractually applicable. If such other Law addresses only some of the processes and remedies, the processes and remedies provided in the Texas Property Code may supplement the same. The parties are encouraged to discuss, as early as practicable, all bona fide payment dispute(s) contemplated herein. Notwithstanding any such bona fide payment dispute(s), Subcontractor shall continue to perform its Services (including Additional Services), as agreed. Further nothing herein is intended to alter or otherwise impact the provisions addressing (a) Constructor's withholding of retainage/reserved funds or (b) Constructor's rights as to fund-trapping, as provided by Law.

22.11 SUBCONTRACTOR PAYMENT FAILURE. Upon payment by Constructor, Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. If Constructor has reason to believe that labor, material, or other obligations incurred in the performance of the Subcontract Work are not being paid, Constructor may give written notice of a potential claim or lien to Subcontractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to the issuance of joint checks. If upon receipt of notice, Subcontractor does not **(a)** supply evidence to the satisfaction of Constructor that payment owed has been paid; or **(b)** post a bond indemnifying Owner, Constructor, Constructor's surety, if any, and the Project from any lien or claim, then Constructor shall have the right to

withhold from any payments due or to become due to Subcontractor a reasonable amount to protect Constructor from any and all loss, damage, or expense, including attorneys' fees that may arise out of or relate to any such claim or lien.

22.12 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS. Subcontractor shall not assign any payment due or to become due under without the written consent of Constructor. If Subcontractor needs to create a security interest in order to secure funding for materials and/or labor to perform the Subcontract Work, then Subcontractor may create a new security interest within the scope of Article 9 of the Uniform Commercial Code—in which case, however, the instrument shall contain a clause to the effect that the assignee's right in and to any money due or to become due to Subcontractor shall be subordinate to Constructor's claims, to the extent already incorporated into the Project; or, as to third parties, e.g., Subcontractor's subcontractors or suppliers, wholly subordinate as to unpaid labor and/or materials supplied by such persons for the Subcontract Work.

22.13 PAYMENT NOT ACCEPTANCE. Payment to Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

24 Insurance and Bonding

24.1. SUBCONTRACTOR'S INSURANCE. Before commencing the Subcontract Work, and as a condition precedent to the initial payment relating thereto, Subcontractor shall furnish proof of its compliance with the requirements set forth in Article 3 of the MSA, including **Exhibit C**. Subcontract shall maintain such insurance—so that, at all relevant times, Subcontractor, Constructor, and any indemnitee are protected from claims arising out of Subcontractor's operations relating to the Subcontract Work, i.e., including Subcontractor's operations relating to its subcontractors, suppliers, or anyone else directly or indirectly employed by any of them for whose acts Subcontractor may be liable.

24.2 SUBCONTRACTOR'S BONDING. Performance, Payment, and Retention bonds may be required of Subcontractor by Constructor, i.e., to the extent evidenced in any PWO or **Exhibit C**. (Maintenance and/or Warranty bonds may likewise be required of Subcontractor.) Such bonds, if any, shall be detailed in the PWO applicable to a specific Project (and **Exhibit C**). At a minimum, such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to Constructor. Constructor's acceptance of Subcontractor's surety shall not be withheld without reasonable cause. The penal sum of the Performance Bond and Payment Bond shall each be in the original full Subcontract Amount, plus any subsequent modifications, including Change Orders. The amounts for other bonds, as set forth herein, may vary by Project, as is customary.

24.2.1 As applicable under any PWO, Subcontractor shall be reimbursed—but *without* retainage, as applicable—for the cost of

any required Performance, Payment, or Retention bonds simultaneously with the first progress payment (or if the penal sum is subsequently increased, reimbursed with the next progress payment). The reimbursement amount for the bonds described herein may be a percentage of the Subcontract Amount, as specified in the PWO, which sum shall be included in the Subcontract Amount. Further, To the extent not required, a Retention Bond, acceptable to Constructor, may be accepted in lieu of retainage/reserved funds otherwise be held by Constructor.

24.2.2 If Subcontractor shall fail to promptly provide any required bonds, Constructor may terminate the applicable PWO and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Constructor costs and expenses incurred by Constructor as a result of said termination shall be paid by Subcontractor; and, at Constructor's discretion, may be applied as an offset prior to recognizing payments that may have otherwise been due and owing to Subcontractor.

25 SUBCONTRACTOR DEFAULT

25.1 NOTICE TO CURE A DEFAULT If Subcontractor persistently fails to supply qualified personnel (or enough workers), proper materials, or equipment to maintain the Progress Schedule; or if Subcontractor persistently fails to make prompt payment to those working under it—such as its subcontractors, suppliers, consultants; or if Subcontractor disregards a Law or the order(s) of any public authority having jurisdiction; or if Subcontractor is otherwise is guilty of a material failure to perform the Subcontract Work at a time when performance is due, then Subcontractor shall be deemed to be in default of the PWO and, correspondingly, the MSA. If Subcontractor fails within three (3) Business Days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then Constructor shall give a second notice to Subcontractor and any Subcontractor surety, to correct the default within a two (2) Business Day period.

25.2 If Subcontractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Constructor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies: **(a)** Supply qualified personnel (or enough workers), materials, equipment, and facilities as Constructor deems necessary for the completion of the Subcontract Work or any part which Subcontractor has failed to complete or perform after written notification, and charge Subcontractor costs and expenses, including reasonable overhead, profit, and attorneys' fees that are due or to become due. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At Subcontractor's request, Constructor shall provide a detailed accounting of the costs to finish the Subcontract Work; **(b)** Contract with one or more additional contractors to perform such part of the Subcon-

tract Work as Constructor determines will provide the most expeditious completion of the Work, and charge the cost to Subcontractor as provided under the subsection above; **(c)** withhold any payments due/to become due Subcontractor pending corrective action in amounts sufficient to cover losses and to compel performance, at Constructor sole discretion. In the event of an emergency affecting the safety of persons or property, Constructor may proceed as above without notice, but Constructor shall give Subcontractor notice promptly after the fact as a precondition of cost recovery; or **(d)** by written notice, terminate the PWO or MSA for which Subcontractor is in material default.

25.3 USE OF SUBCONTRACTOR'S EQUIPMENT If Constructor performs work under this article, either directly or through other subcontractors, Constructor or other subcontractors shall have the right to take and use any materials or supplies for which Constructor or other subcontractors have paid and located at the Worksite (or elsewhere) for the purpose of completing any remaining Subcontract Work.

26 Bankruptcy; Contractual Right of Offset

26.1 TERMINATION ABSENT CURE If Subcontractor files a petition under the Bankruptcy Code, this MSA shall terminate if: **(a)** Subcontractor or Subcontractor's trustee rejects the MSA, **(b)** a default has occurred, and Subcontractor is unable to give adequate assurance of required performance; or **(c)** Subcontractor is otherwise unable to comply with the requirements for assuming this MSA under the applicable provisions of the Bankruptcy Code. Further, if Subcontractor is not performing in accordance with the Progress Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, Constructor, while awaiting the decision of Subcontractor or its trustee to reject or to assume this MSA—and to provide adequate assurance of its ability to perform—may avail itself of such remedies under this Section as are reasonably necessary to maintain the Progress Schedule and as otherwise in the best interest of the Project.

26.2 RIGHT OF OFFSET Constructor, in its sole discretion, may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit, attorneys' fees, and expert fees, as applicable. Subcontractor shall be liable for the payment of any amount by which costs incurred may exceed the unpaid balance of the Subcontract Amount.

Suspension, Termination, and Assignment

27.1 SUSPENSION FOR CONVENIENCE Should Constructor or Owner, if applicable, suspend the Subcontract Work, or any part thereof, for convenience of Constructor and/or Owner, Constructor shall notify Subcontractor in writing and, upon receiving notification, Subcontractor shall immediately suspend the Subcontract Work. To the extent provided for under the prime agree-

ment, if any, or to the extent Constructor recovers such on Subcontractor's behalf, the Subcontract Amount and the Subcontract Time shall be equitably adjusted by Subcontract Change Order for the cost and delay resulting from any such suspension. To the extent not prohibited by an applicable prime agreement, Constructor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit Subcontractor to prosecute the claim, in the name of Constructor, i.e., for the use and benefit of Subcontractor. Constructor may require, for its own benefit, a release and waiver of claims as consideration for allowing any such pass-through claim. In no event shall phased work or interruptions of the Subcontract Work for short periods of time shall be considered a suspension. Further, to the extent permissible under applicable law, no claim under this section shall be allowed for any costs incurred more than fourteen (14) Days before Subcontractor's notice of suspension to Constructor. Further, neither the Subcontract Amount nor the Progress Schedule shall be adjusted for any suspension to the extent that performance would have been suspended, due to the fault or negligence of Subcontractor—or by a cause for which Subcontractor would have been responsible, e.g., a cause by one of its subcontractors. Finally, the Subcontract Amount shall not be adjusted for any suspension to the extent that performance would have been suspended for a cause form which Subcontractor would have been entitled only to a time extension.

27.2 TERMINATION FOR CONVENIENCE. Should Constructor terminate for convenience the applicable PWO and any other document touching or concerning the Subcontract Work, such as the MSA or a change order, for example, Constructor shall notify Subcontractor in writing within three (3) Business Days of the termination for convenience and, upon written notification, such agreement(s) shall be terminated and Subcontractor shall immediately stop the Subcontract Work, follow all of Constructor's instructions, and mitigate all costs. In the event of such termination—or in the event of Owner's termination of its prime agreement with Constructor—so long as the same is through no fault of Subcontractor, Subcontractor shall be entitled to payment for the Subcontract Work performed or in process.

27.3 CONTINGENT ASSIGNMENT OF THIS AGREEMENT. To the extent the prime agreement calls for the Subcontractor to consent to the assignment of subcontract by Constructor to Owner, if elected by Owner, such assignment shall be limited to the applicable PWO issued under this MSA, along with the MSA itself. Such a contingent assignment shall be subject to the prior rights of a surety that may be obligated under Constructor's and/or Subcontractor's bonding, if any. In such case, Subcontractor shall be deemed to have consented to such assignment, and shall agree to be bound to the assignee by the terms of the applicable PWO and this MSA—provided that the assignee, correspondingly, fulfills the (prior) obligations of Constructor. Im-

portantly, ANY SUCH ASSIGNMENT SHALL NOT BE EFFECTIVE TO ANY OTHER PWO ISSUED TO SUBCONTRACTOR UNDER THIS MSA, E.G., ON OTHER PROJECTS.

27.4 WRONGFUL EXERCISE. If Constructor exercises its right of termination for cause, but it is later determined that such exercise was wrongful, the same shall be converted to a termination for convenience.