



SUBCONTRACT AGREEMENT

AGREEMENT made as of the ____ day of ____ in the year 2014.

BETWEEN the **CONTRACTOR:**

DBAC, Inc. (License No. 637651)
101 Shipyard Way, Suite A
Newport Beach, CA 92663
Tel: 949-723-0147 Fax: 949-723-0126

and the **SUBCONTRACTOR:**

Vendor No.:

Type of Work:
Cost Code:

The Contractor has made a contract for construction (hereinafter, the Prime Contract)

with the **OWNER:**

for the following **PROJECT:**

DBAC, Inc. Job No.:

CONTRACT SUM:

The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract
Subcontract Sum of _____ (\$ _____), subject to Additions and
Deductions as provided in the Subcontract Documents.

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The **ARCHITECT** for the Project:

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 15 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 15.

§ 1.2 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Contractor and Subcontractor.

§ 1.3 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and to the provisions of the Prime Contract that apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor’s Work to avoid conflicts or interference in the Subcontractor’s Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor’s construction schedule, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor’s Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 Except as provided in Article 14, the Contractor’s equipment will be available to the Subcontractor only at the Contractor’s discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Subcontractor shall designate authorized representatives, and such persons shall not be reassigned by Subcontractor without Contractor’s prior approval, which may be granted or withheld at Contractor’s sole discretion. Contractor may communicate directly with such designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give

notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.4 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall, upon written request, promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

- .1 five days' written notice prior to the Contractor's providing services or materials, except in an emergency; and
- .2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.2 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.3 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.4 The Subcontractor agrees the Contractor has the authority to reject Work of the Subcontractor that does not conform to the Prime Contract.

§ 4.1.5 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.6 The Subcontractor shall take necessary precautions to protect the work of the Contractor or other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.7 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within one day an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor.

§ 4.3.4 The Subcontractor shall indemnify, defend and hold harmless the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

§ 4.5 WARRANTY

The Subcontractor warrants to the Owner and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION

§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify, defend and hold harmless the Owner, Contractor, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney’s fees, arising out of or resulting from performance of the Subcontractor’s Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the intentional or negligent acts or omissions of the Subcontractor or anyone directly or indirectly employed by the Subcontractor or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor or anyone directly or indirectly employed by the Subcontractor or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT

If the Contractor does not pay the undisputed amounts then due to Subcontractor through no fault of the Subcontractor, within fifteen days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days’ written notice to the Contractor, stop the Work of this Subcontract until payment of the undisputed amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor’s reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents, including but not limited to Exhibit C listed in Article 15.1.4.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents, including but not limited to Exhibit C listed in Article 15.1.4. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor’s claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall, at the election of Contractor in its sole discretion, be subject to mediation as a condition precedent to litigation.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered a mediator to be selected by Contractor in Contractor's sole discretion. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, or another location to be selected by Contractor in Contractor's sole discretion. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of undisputed amounts due under this Subcontract for 60 days or longer, except that Contractor is under no obligation to pay the Subcontractor the Subcontract Sum or any other amounts due Subcontractor under the Subcontract until Contractor receives payment from the Owner for work completed by the Subcontractor. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, or its agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a five-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

- .1 cease operations as directed by the Contractor in the notice;
- .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine.

In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

- .1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or
- .2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Clarifications to Subcontractor's Work, attached as Exhibit A listed in Article 15.1.4, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Clarifications to Subcontractor's Work to be the responsibility of others.

ARTICLE 9 TIME IS OF THE ESSENCE

§ 9.1 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.2 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM (See Page one for Subcontract Sum.)

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 On or Before the 20th day of each month, Subcontractor shall, pursuant to the Invoice and Lien Release Instructions attached as Exhibit D listed in Article 15.1.4 submit to Contractor a Subcontractor's Invoice, attached as Exhibit E listed in Article 15.1.4 requesting payment for Work as of the end of that month. Subcontractor's Invoice shall be accompanied by conditional Lien Waivers, attached as Exhibit F listed in Article 15.1.4 executed by the Subcontractor for all Work performed during the period of time covered by such Invoice, an unconditional Lien Waiver, attached as Exhibit G listed in Article 15.1.4 executed by the Subcontractor for all Work previously invoiced and paid by the Contractor, and any such other supporting documentation or verification as required by the Contract Documents or Owner.

§ 11.2 If the Subcontractor's application for payment is received by the Contractor after the 20th day of the Month, the Subcontractor's Work covered by it may be included in the next month's Subcontractor's Invoice.

§ 11.3 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the month covered by the application for payment.

§ 11.4 Payment by the Owner to the Contractor is a condition precedent to the Contractor's obligation to pay the Subcontractor. Nothing in the Contract Documents creates or implies any obligation that the Contractor pay the Subcontractor the Subcontract Sum or any other amounts due Subcontractor under the Subcontract until Contractor receives payment from the Owner for work completed by the Subcontractor.

§ 11.5 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

Within 30 days following: (i) issuance of the certificate for payment covering such substantially completed Work and (ii) satisfaction by the Subcontractor of the conditions set forth in the Contract documents for issuance of progress payments, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor’s Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor’s Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor’s substantially completed Work to the same percentage of retainage as that on the Contractor’s Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when: (i) the Subcontractor’s Work is fully performed in accordance with the requirements of the Subcontract Documents; (ii) a certificate for payment has been issued covering the Subcontractor’s completed Work; (iii) the Subcontractor has executed and delivered the unconditional progress release form and final conditional lien release form, attached as Exhibits G and H listed in Article 15.1.4, and the Guarantee Form, attached as Exhibit J listed in Article 15.1.4 and; (iv) the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within ten days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor’s Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

Upon final payment from Contractor to Subcontractor and after the check has cleared the bank, an unconditional final release form, attached as Exhibit I must be submitted by the Subcontractor to the Contractor.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance coverage as delineated and required by the Insurance Requirement Information For Subcontractors, attached as Exhibit B listed in Article 15.1.4.

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor’s Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor’s completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor’s Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor’s information and belief.

§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor and the Owner for claims caused in whole or in part by the Subcontractor’s negligent acts or omissions during the Subcontractor’s operations; and (2) the Contractor

as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 If any ambiguity or inconsistency exists or arises between this Subcontract and the Insurance Requirement Information For Subcontractors, attached as Exhibit B listed in Article 15.1.4, the Insurance Requirement Information For Subcontractors controls.

§ 13.8 WAIVERS OF SUBROGATION

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) 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 Prime 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.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

§ 14.3 Retainage and any reduction thereto are as follows:

« 10% »

§ 14.4 The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 7.

ARTICLE 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 15.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 15.1.1 This Subcontract and the Exhibits to the Subcontract as listed in Article 15.1.4.

§ 15.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 15.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement as incorporated through Article 5 above.

§ 15.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

- Attachment A: Clarifications to Subcontractor's Work
- Attachment B: Insurance Requirement Information For Subcontractors
- Attachment C: Change Order Requirements Statement
- Attachment D: Invoice and Lien Release Instruction Form
- Attachment E: Subcontractor's Invoice
- Attachment F: Conditional Waiver and Release Upon Progress Payment
- Attachment G: Unconditional Waiver and Release Upon Progress Payment
- Attachment H: Conditional Waiver and Release Upon Final Payment
- Attachment I: Unconditional Waiver and Release Upon Final Payment
- Attachment J: Guarantee Form

This Agreement entered into as of the day and year first written above.

SUBCONTRACTOR:

CONTRACTOR: (DBAC, INC.)

Name:

Name:

Title:

Title: