

## **COMPOSITE TECHNOLOGY & INFRASTRUCTURE, LLC (CTI) GENERAL TERMS & CONDITIONS**

1. **Performance and Progress of the Work.** Subcontractor's Work shall be performed and all materials supplied in strict compliance with the Contract Documents. Subcontractor agrees to perform the Work and its obligations under this Subcontract in a prompt and diligent manner. Subcontractor shall cooperate with CTI with scheduling and performing the Work to avoid conflict, delay in or interference with the work of CTI, other subcontractors or Owner's own forces. Subcontractor shall promptly submit shop drawings, product data, samples and similar submittals required by the Contract Documents with reasonable promptness in accordance with any delivery schedule in Schedule A to this Subcontract or the Contract Documents and in such sequence as to cause no delay in the work or in the activities of CTI or other subcontractors. The Subcontractor shall work in harmony with CTI, other subcontractors, and other labor employed on the Project. The Subcontractor shall do all cutting, fitting and patching work that may be required to make its several parts come together properly, and to fit it to receive or to be received by the work of CTI and other contractors, shown or reasonably implied by the Contract Documents.

2. **Substitutions.** No substitutions shall be made in the Work unless permitted in the Contract Documents and only after the Subcontractor receives written approvals from Owner and CTI. The Subcontractor shall indemnify CTI (including its affiliates, parents and subsidiaries, and their respective officers, directors, agents and employees) as a result of such substitutions, whether or not the Subcontractor has obtained approval for such substitutions.

3. **Additions.** No change orders or additional work shall be recognized or paid for unless evidenced by a written change order signed by the Owner and CTI or CTI's project manager agreeing to the change order or change in scope of work.

4. **Changes in the Work.** Subcontractor may be ordered in writing by CTI, 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 Contract Documents, and, to the extent agreed to by CTI in writing, the Total Subcontract Sum and the schedule for completion of the Work (the "Completion Schedule") may be adjusted accordingly. The Subcontractor, prior to the commencement of such change or revised work, shall submit promptly to CTI written copies of a claim for adjustment to the Total Subcontract Sum and the Completion Schedule for such revised work in a manner consistent with the requirements of the Contract Documents. Failure to submit a written claim for adjustments to the Total Subcontract Sum and the Completion Schedule prior to the commencement of the Work shall be deemed a waiver by the Subcontractor to claim any adjustment to the Total Subcontract Sum and the Completion Schedule. CTI's field representative shall have no authority to request any change that in any way increases the Total Subcontract Sum. All claims by Subcontractor including but not limited to demands or assertions for interpretation of contract terms, payment of money, extension of time, damages for delays or other relief with respect to the Contract Documents, must be initiated within twenty-one (21) days after occurrence of the event giving rise to the claim or within twenty-one (21) days after the Subcontractor first becomes aware of the condition giving rise to the claim, whichever is later, provided that any claim for unknown conditions must be made before such conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. A claim which will affect or become part of a claim which CTI is required to make under the Contract Documents to the Owner within a specified period of time or in a specified manner shall be made in accordance with the above and, additionally, in sufficient time to permit CTI to satisfy the requirements of the Contract Documents or such claim shall otherwise be waived by the Subcontractor. Claims shall not be deemed timely unless received by CTI not less than two working days preceding the time by which CTI's claim must be made to the Owner. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which CTI is bound.

5. **Payment.** All invoices by Subcontractor to CTI shall conform with the Subcontractors approved schedule of values as provided on Schedule A and shall be paid by CTI, less a 10% percent retainage (discussed below), within twenty (20) days of CTI's receipt of payment from the Owner. All quantities are approximate and included in the Subcontract price. Subcontractor shall be solely responsible for and pay all employment taxes and benefits, union contributions, taxes, assessments and premiums under the Federal Social Security Act, any applicable Unemployment Insurance Law, Workmen's Compensation Law, Old Age Benefit Law, Sales Tax Law, Use Tax Law, Personal Property Tax Law or other applicable law, now or hereafter in effect, payable by reason of or in connection with any part of the Work. Upon completion of the Work and before final payment, Subcontractor and CTI shall agree upon a punchlist of work remaining to be due under the Contract Documents and this Subcontract which the Subcontractor agrees to perform within five (5) business days; which if not corrected CTI may correct and setoff and deduct the cost thereof from any amounts due Subcontractor from CTI. Subcontractor shall furnish at its cost and expense all necessary shop drawings or samples required.

Prior to any payment to Subcontractor, including the final payment to Subcontractor after all of the Work has been completed and the Project is complete, Subcontractor must provide lien waivers and releases to CTI for itself and all of its subcontractors or material suppliers in a form satisfactory to CTI in its sole discretion. At CTI's request, Subcontractor shall also provide CTI with a written affidavit from Subcontractor that, to Subcontractor's knowledge and information, such lien waivers and releases include and cover all materials and services for which a lien could be filed or attach to the Project or any part thereof. CTI may withhold payment of 10% of all invoices until after the Project is complete in accordance with the Contract Documents. 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 CTI and shall furnish satisfactory evidence, when requested by CTI, to verify its compliance. Invoices for payment cannot be processed unless the following information is submitted to CTI's Accounts Payable Department: Subcontractor's original invoice (faxed copy not acceptable) which must include CTI's Purchase Order number, and if applicable, any Change Order numbers, subcontractor's signed Purchase Order and if applicable, sub-agreement numbers.

6. **Commencement Date and Substantial Completion.** Subcontractor shall commence the Work as provided on Schedule A or as otherwise directed by CTI and shall achieve substantial completion of the entire Work within the time frame required by Schedule A and the Contract Documents as between CTI and the Owner.

7. **Subcontractor Performance & Payment Bond.** If a performance and payment bond is required by the Owner or CTI, then Subcontractor shall be required to provide a performance and payment bond in the full amount of this Subcontract and in a form and by a surety satisfactory to CTI in its sole discretion. In the event the Subcontractor fails to promptly provide the performance and payment bond, CTI may terminate this Subcontract and

contract with another subcontractor for the completion of the Work, all costs and expenses incurred by CTI to arrange for the completion of the Work by another subcontractor shall be paid by the Subcontractor.

8. Warranty. The Subcontractor warrants its work against all deficiencies and defects in materials and/or workmanship as called for in the Contract Documents. In addition, the Subcontractor warrants to CTI that all materials and equipment incorporated in the Work will be new unless otherwise specified in the Contract Documents, that the Work and materials will be of top quality, and that all Work and materials will be in conformance with this Subcontract, the Contract Documents, and all applicable requirements of local codes and zoning requirements and all federal, state and local rules, regulations, orders, statutes and ordinances. Any portion of the Work not conforming to these requirements shall be considered defective. If no warranty is required by the Contract Documents, then the Subcontractor shall warrant its work as described in this Section for a period of one (1) year from the date of substantial completion of the entire Project; provided, that all of the Work has been completed and accepted by CTI and Owner. Subcontractor shall be fully responsible for (a) any defective or improper work or material, (b) any damages caused thereby, and (c) the repair or replacement of such work, materials or damages, which repair or replacement shall be satisfactory to CTI and Owner in their sole discretion. The warranties made by Subcontractor in this Section shall be in addition to and not in limitation of any other warranty or remedy required by law.

9. OSHA Compliance. The Subcontractor shall comply with all Occupational Safety & Health Administration (“OSHA”) rules and regulations as well as all local, state and federal laws and CTI’s Health and Safety Requirements. These health and safety requirements are not intended to relieve the Subcontractor of its contractual obligations to provide a health and safety program for its employees. The Subcontractor shall establish, maintain and enforce a health and safety program and ensure that all personnel are properly trained and instructed for all jobs which require specific training and/or competency to meet all applicable OSHA, state, local and federal law and regulations.

10. Remedies. CTI shall have the right to terminate this Subcontract, without further notice, in the event Subcontractor fails to commence or continue work in a timely manner, and in compliance with Schedule A and the Contract Documents, or if the Subcontractor’s work adversely affects the timely completion of the Project or interferes with the work of CTI or other subcontractors. In such event, the limit of CTI’s financial responsibility to Subcontractor shall be only for payment for the Work completed. The Subcontractor, upon written notice by CTI, must correct, to CTI’s satisfaction, any items considered by CTI to not comply with this Subcontract or the Contract Documents within one (1) business day. If the Subcontractor fails to correct such items or fails to diligently commence and continue correction of the deficient work within one (1) business day, then CTI may, at its option: (a) require the Subcontractor to add more people, extend its work hours, or employ other means or remedies to cause the Work to be caught up or corrected; or (b) furnish the necessary materials, equipment and labor necessary to correct the Work in accordance with the specifications set forth in Schedule A or the Contract Documents or terminate this agreement by giving Subcontractor three (3) days’ written notice of termination. CTI may use any materials, equipment or tools furnished by or belonging to the Subcontractor to complete the Work. The Subcontractor shall be liable to CTI for all costs incurred by CTI in performing the Work, which may be setoff and deducted from any money due or to become due to the Subcontractor from CTI. Subcontractor shall be responsible for all costs related to the delay of the Project caused by it. Subcontractor waives, and CTI shall not be liable for, any and all claims for special, indirect, punitive or consequential damages (even if CTI has been notified of the possibility of such damages), including loss of profits or loss of opportunity, arising directly or indirectly from the Work which is the subject of this agreement. This limitation and waiver is applicable regardless which party terminates this agreement.

11. Indemnification. Subcontractor agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless, CTI (including its affiliates, parents and subsidiaries, and their respective officers, directors, agents and employees) and when required by CTI or by the Contract Documents, the Owner, the architect, architects’ consultants, agents and employees, from and against all claims, lawsuits, damages, loss and expenses, including but not limited to reasonable attorneys’ fees and costs, arising out of or resulting from the performance of the Subcontractor’s work under this Subcontract, provided that any such claim, lawsuit, damage, loss, or expense is:

(a) Attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and

(b) (i) caused or alleged to be caused in whole or in part by any negligent act or omission of the Subcontractor or anyone directly or indirectly employed, retained or engaged by the Subcontractor or for anyone for whose act the Subcontractor may be liable, or (ii) is the result of or relates to a violation of any statutory duty or regulation or obligation arising out of the Subcontractor’s performance or lack of performance of the Work or arising out of the performance or lack of performance by anyone directly or indirectly employed, retained or engaged by the Subcontractor or anyone for whose acts it may be liable pursuant to the performance of this Agreement.

The Subcontractor’s indemnification obligation shall apply regardless of whether any such claim, lawsuit, damage, loss, or expense is caused in part by a party indemnified hereunder. Any such indemnification obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Subcontract.

12. Insurance. In addition to any insurance required to be maintained by the Subcontractor pursuant to the Contract Documents, Subcontractor will purchase and maintain the following insurance policies in the form acceptable to CTI or as required by the Contract Documents as will protect Subcontractor with limits not less than indicated for the respective item:

(a) Comprehensive General Liability Insurance including Contractual Liability, Products-Completed Operations Liability and Explosion, Fire, Legal Liability, Collapse and Underground Damage Liability, as well as coverage on all Subcontractor’s equipment (other than motor vehicles licensed for highway use, owned, hired or used in performance with its work for CTI), with limits not less than \$2,000,000 for bodily injury and property damage combined for each occurrence and in the aggregate. The Comprehensive General Liability Insurance must cover CTI and Owner as additional insureds and such policy shall contain the following language: “Naming CTI or Owner as additional insureds shall not prevent recovery in any situation in which recovery would have been available had CTI or Owner not been named additional insured.”

(b) Commercial Umbrella/Excess Liability insurance with a limit of no less than \$1,000,000. The Commercial Umbrella/Excess Liability insurance policy must cover CTI and Owner as additional insureds and such policy shall contain the following language: “Naming CTI or Owner as additional insureds shall not prevent recovery in any situation in which recovery would have been available had CTI or Owner not been named additional insured.”

(c) Workers' Compensation and Occupational Disease Insurance including Employer's Liability Insurance with a limit not less than \$1,000,000 or the minimum required by law, whichever is greater.

(d) Automobile Liability Insurance covering all motor vehicles owned, hired or used in the performance of any contract work with combined limits not less than \$1,000,000 bodily injury and property damage for each occurrence. The Automobile Liability Insurance must cover CTI and Owner as additional insureds and such policy shall contain the following language: "Naming CTI or Owner as additional insureds shall not prevent recovery in any situation in which recovery would have been available had CTI or Owner not been named additional insured."

Subcontractor shall provide certificates evidencing the above insurance to CTI prior to the commencement of any work. Such Certificates shall provide that 30 days' advance written notice shall be given to CTI and Owner in the event of any material change in, or cancellation of, such insurance. Upon request by CTI, Subcontractor shall also provide Certificates of Insurance to CTI evidencing continuation of such insurance covering the period subsequent to the period of the performance of its work under this agreement. This preceding sentence shall survive termination of this contract.

13. No Limitation upon Liability. In any and all claims against the Owner, its agents and employees or against CTI or any other contractors or subcontractors, or any of their agents or employees, by any employee of the Subcontractor, or anyone directly or indirectly employed by the Subcontractor, or anyone whose acts the Subcontractor may be liable, the indemnification obligations under this agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under the Workers Compensation Acts, General Liability Disability Benefit Acts, or any other employee benefit acts.

14. Compliance with Laws. The Subcontractor agrees to be bound by and, at its own cost, comply with all federal, state and local laws, ordinances and regulations applicable to the Work. Subcontractor shall be liable to CTI and the Owner for all losses, costs and expenses attributable to any acts of commission or omission by the Subcontractor resulting from the failure to comply with all federal, state and local laws, ordinances and regulations.

15. Arbitration and Jurisdiction. The parties hereto agree, in the event CTI is the subject of an arbitration arising out of, or relating to, the Contract Documents or this agreement, that CTI can then bring any claim it may have arising out of, or relating to, this Subcontract against Subcontractor in that arbitration and that Subcontractor agrees that it will be subject to the jurisdiction of such arbitration. And further, the parties agree that in the event CTI brings a claim against Subcontractor in such arbitration, then Subcontractor can also bring any claims it may have relating to, or arising out of, this Subcontract against CTI in such arbitration. Any award rendered in such arbitration shall be final, and judgment may be entered upon the award in accordance with the applicable law in any court having jurisdiction thereof. Other than as set forth above, the parties do not agree to mandatory arbitration of their disputes, but do agree that any litigation arising out of, or relating to, this Subcontract shall be venued in the state or federal courts located in Monroe County, State of New York and Subcontractor agrees to be subject to the jurisdiction of the state and federal courts venued in the State of New York.

16. Suspension, Termination. If CTI suspends or discontinues work on the Project, at the Owner's request or due to any other cause or for no cause whatsoever, CTI may, at its option terminate this Subcontract. Any claim by the Subcontractor related to such suspension or discontinuance of work on the Project against CTI shall be limited to the amount of any claim CTI has against the Owner for Subcontractor's work. CTI shall also have the same rights to terminate this Subcontract as the Owner has to terminate the Contract Documents.

17. Notices. All notices under this Subcontract shall be in writing and shall be delivered personally or sent by facsimile transmission or by certified mail, addressed as set forth above. Notice is given immediately upon personal delivery, or three (3) business days following the date on which such notice is mailed in accordance with this section, or the next day following the date on which such notice is sent by facsimile transmission and the sender has received a confirmation of receipt.

18. Governing Law. This agreement shall be governed by the laws of the State of New York, without regard to its principles of conflicts of laws.

19. Inconsistencies and Omissions. Should inconsistencies or omissions appear in this Subcontract, Schedule A or the Contract Documents with respect to the Work, it shall be the duty of the Subcontractor to notify CTI in writing within three (3) working days of the Subcontractor's discovery of such inconsistency or omission. Within three (3) working days of CTI's receipt of such written notice, CTI shall instruct the Subcontractor as to the measures to be taken with respect to such inconsistencies or omissions and the Subcontractor shall comply with CTI's instructions.

20. Duplications. In the event there is any duplication of or conflict between the contract terms, specifications, and general conditions in this Subcontract and the Contract Documents, then the more stringent clause shall govern.

21. Equal Employment Opportunity Employment. CTI is an equal opportunity employer and is a federal contractor. Consequently, the parties agree that, to the extent applicable, they will comply with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Vocational Rehabilitation Act of 1973, and other applicable law, and the parties also agree that these laws are hereby incorporated herein by this reference.

22. Assignment. The Subcontractor may not assign or transfer this Subcontract or any part hereof or delegate or assign any of its duties, obligations or rights (including its right to receive amounts due) under this Subcontract without CTI's prior written consent, which consent may be withheld by CTI for any or no reason. Any such assignment, transfer or delegation in violation of this section is void.

23. Entire Agreement, Amendment and Waiver. This Subcontract (a) constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof, and (b) may be modified or amended only by a written document signed by CTI and Subcontractor. No supplement, modification or waiver of this Subcontract will be binding unless executed in writing by the party to be bound thereby and specifically references this Subcontract and the section(s) so modified. No waiver of any term or condition of this Subcontract shall be deemed or shall constitute a waiver of any other term or condition hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

24. Severability/Revision. Should any provision of this Subcontract be held by a court of law, or other body having proper jurisdiction, to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Subcontract shall not be affected or impaired thereby and the parties agree that partial enforcement of this Subcontract or revisions of the illegal, invalid or unenforceable provision is appropriate.

**ACCEPTED BY:**

**Composite Technology & Infrastructure, LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Contractor/Owner:** \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_