

STATE SPECIFIC PROVISIONS

12-03-18

SECTION 6: PAYMENT

The following modifications to Section 6 of the MSA shall apply in Colorado, Florida, Oregon, Tennessee and Washington:

- **Section 6(a) shall be deleted in its entirety and replaced with:**

Contractor agrees, in consideration of the full and complete performance of the Work by the Subcontractor in accordance with the terms and provisions of the Subcontract Documents, to pay or cause to be paid to the Subcontractor the Subcontract Sum. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of Work performed by Subcontractor. No payment, whether a progress or final payment, will be made to Subcontractor unless and until that fund comes into existence. It is an express condition precedent to Contractor's obligation to make payment to Subcontractor that the Contractor shall first have been paid by Owner for the work performed by Subcontractor. Subcontractor acknowledges and agrees the express intent and effect of this paragraph is to affirmatively shift to Subcontractor the risk of nonpayment by Owner. Subject to the satisfaction of this condition precedent, Contractor shall make payments to Subcontractor within seven (7) days after receipt by Contractor of payment from Owner for the work of Subcontract for which payment has been made (or within such shorter period as may be required by law). If Contractor has provided payment or performance bonds for the Project, the obligations of Contractor and its surety under any such bonds to make payment (whether a progress payment or final payment) to any claimant on such bonds is similarly subject to the express condition precedent of payment of funds designated for Subcontractor by Owner.

- **Section 6(b) the first paragraph shall be replaced with:**

If the "pay if paid" provisions of paragraph (a) above are determined by the jurisdiction governing this agreement to be void and unenforceable, then the terms of this paragraph (b) shall apply. If Contractor is not paid by Owner any sum claimed due by Subcontractor, then Contractor's obligation to make payment to Subcontractor with respect to the time for payment shall, in addition to any other conditions set forth in the Subcontract Documents, be subject to the following conditions precedent:

The following modifications to Section 6 of the MSA shall apply in Georgia:

- **Section 6(a) shall be deleted in its entirety and replaced with:**

Contractor agrees, in consideration of the full and complete performance of the Work by the Subcontractor in accordance with the terms and provisions of the Subcontract Documents, to pay or cause to be paid to the Subcontractor the Subcontract Sum. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of Work performed by Subcontractor. No payment, whether a progress or final payment, will be made to Subcontractor unless and until that fund comes into existence. It is an express condition precedent to Contractor's obligation to make payment to Subcontractor that the Contractor shall first have been paid by Owner for the work performed by Subcontractor. Subcontractor acknowledges and agrees the express intent and effect of this paragraph is to affirmatively shift to Subcontractor the risk of nonpayment by Owner. Subject to the satisfaction of this condition precedent, Contractor shall make payments to Subcontractor within ten (10) days after receipt by Contractor of payment from Owner for the work of Subcontract for which payment has been made (or within such shorter period as may be required by law). If Contractor has provided payment or performance bonds for the Project, the obligations of Contractor and its surety under any such bonds to make payment (whether a progress payment or final payment) to

any claimant on such bonds is similarly subject to the express condition precedent of payment of funds designated for Subcontractor by Owner.

- **Section 6(b) the first paragraph shall be replaced with:**

If the “pay if paid” provisions of paragraph (a) above are determined by the jurisdiction governing this agreement to be void and unenforceable, then the terms of this paragraph (b) shall apply. If Contractor is not paid by Owner any sum claimed due by Subcontractor, then Contractor’s obligation to make payment to Subcontractor with respect to the time for payment shall, in addition to any other conditions set forth in the Subcontract Documents, be subject to the following conditions precedent:

- **Section 6(d) add the following to the end of the Section:**

In addition, Contractor shall be entitled to retain any legally required withholdings from Subcontractor, (including, without limitation, under Georgia Code of Regulations 560-12.2-.26) until Contractor is legally permitted to release those funds.

The following modifications to Section 6 of the MSA shall apply in Texas:

- **Section 6(a) shall be deleted in its entirety and replaced with:**

Contractor agrees, in consideration of the full and complete performance of the Work by the Subcontractor in accordance with the terms and provisions of the Subcontract Documents, to pay or cause to be paid to the Subcontractor the Subcontract Sum. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of Work performed by Subcontractor. No payment, whether a progress or final payment, will be made to Subcontractor unless and until that fund comes into existence. It is an express condition precedent to Contractor’s obligation to make payment to Subcontractor that the Contractor shall first have been paid by Owner for the work performed by Subcontractor. Subcontractor acknowledges and agrees the express intent and effect of this paragraph is to affirmatively shift to Subcontractor the risk of nonpayment by Owner. However, in the event Owner’s nonpayment is due to Contractor’s failure to meet its obligations set forth in the Prime Contract, and such failure is not due to Subcontractor’s failure to meet its obligations pursuant to the Contract Documents, the Contractor accepts the risk of nonpayment by Owner, and Subcontractor will be paid within a reasonable amount of time. In the event Owner’s nonpayment is due to any other reason, Subcontractor accepts the risk of nonpayment. Subject to the satisfaction of this condition precedent, Contractor shall make payments to Subcontractor within seven (7) days after receipt by Contractor of payment from Owner for the work of Subcontract for which payment has been made (or within such shorter period as may be required by law). If Contractor has provided payment or performance bonds for the Project, the obligations of Contractor and its surety under any such bonds to make payment (whether a progress payment or final payment) to any claimant on such bonds is similarly subject to the express condition precedent of payment of funds designated for Subcontractor by Owner.

- **Section 6(b) the first paragraph shall be replaced with:**

If the “pay if paid” provisions of paragraph (a) above are determined by the jurisdiction governing this agreement to be void and unenforceable, then the terms of this paragraph (b) shall apply. If Contractor is not paid by Owner any sum claimed due by Subcontractor, then Contractor’s obligation to make payment to Subcontractor with respect to the time for payment shall, in addition to any other conditions set forth in the Subcontract Documents, be subject to the following conditions precedent:

The following modifications to Section 6 of the MSA shall apply in New York:

- **Section 6(a) shall be deleted in its entirety and replaced with:**

Contractor agrees, in consideration of the full and complete performance of the Work by the Subcontractor in accordance with the terms and provisions of the Subcontract Documents, to pay or cause to be paid to the Subcontractor the Subcontract Sum. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of Work performed by Subcontractor. The terms and conditions of the Subcontract Documents shall supersede the provisions of Article 35-E of the NYS General Business Law ("Article 35-E") to the fullest extent permitted by law, including the following terms: (a) the term "invoices" as used in Article 35-E shall be defined as an application for payment submitted by Subcontractor pursuant to the terms of the Subcontract Documents; and (b) the time for Contractor to approve or disapprove all or portion of Subcontractor's application for payment shall be at least twelve business days from Contractor's receipt of Owner or Architect's approval or disapproval of all or a portion of Contractor's application for payment to the Owner to the extent it pertains to Subcontractor's application for payment. The Contractor's payment shall be made on the basis of a duly approved progress payment application for the work performed and materials supplied during the billing cycle. Contractor shall make payments to Subcontractor within seven (7) days after receipt by Contractor of payment from Owner for the Work of Subcontractor for which payment has been made (or within such shorter period as may be required by law).

- **Section 6(b) add a new Section at the end of this Section as 6(b)(iii):**

This clause only controls the right of Subcontractor to receive payment from Contractor and Contractor's Surety (if any) but shall not impair any right of Subcontractor to enforce and foreclose upon any lien upon the Owner's property and/or upon any funds due from Owner to Contractor granted under any lien statute in accordance with New York Lien Law, Section 34, by agreeing to the terms of this clause Subcontractor is not waiving any rights to which it is entitled under the Lien Law. To the extent that this clause could operate to limit or restrict the full extent of Subcontractor's lien rights, this clause is waived in that context only. However, for all other purposes, this clause shall remaining full force and effect.

- **Section 6(d) shall be deleted in its entirety and replaced with:**

Contractor shall retain from progress or other payments hereunder the percentage of retainage the Owner holds back from the Contractor's payment applications to the Owner until after final approval of the work by the Architect and Owner and until ten (10) days after Contractor's receipt of final retention payment from Owner, unless otherwise required by law.

- **Section 6(i) add the following to the end of the Section:**

The Subcontractor acknowledges that it shall hold all payments as a trust fund to be applied before application to any other purpose to payment of: (i) claims of sub-subcontractors, suppliers, materialmen or other entities performing work and employed by Subcontractor, (ii) to claims for utilities furnished and taxes imposed, and to the payment of any premiums on surety bonds and other bonds filed, and any premiums on insurance accruing during performance of the Work, and (iii) any indemnity obligations of Subcontractor hereunder.

SECTION 7: INDEMNIFICATION AND DUTY TO DEFEND

The following modifications to Section 7 of the MSA shall apply in Colorado and North Carolina:

- Section 7 shall be deleted in its entirety and replaced with:

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUBCONTRACTOR SPECIFICALLY OBLIGATES ITSELF TO PROTECT, IMMEDIATELY DEFEND, INDEMNIFY AND HOLD CONTRACTOR, OWNER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES AND ANY OTHER PERSON INDEMNIFIED BY OWNER (HEREINAFTER “INDEMNITEES”) HARMLESS AGAINST CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, INCLUDING ANY FEES OF ACCOUNTANTS, ATTORNEYS, EXPERTS OR OTHER PROFESSIONALS, OR INVESTIGATION EXPENSES (HEREINAFTER “LOSSES”) ARISING OUT OF, RESULTING FROM, OR IN ANY WAY CONNECTED WITH THE SUBCONTRACTOR’S OPERATIONS AND THE WORK, EXCEPT THIS SECTION IS NOT INTENDED TO REQUIRE INDEMNIFICATION FOR A CLAIM, DAMAGE, LOSS OR EXPENSE TO THE EXTENT ARISING OUT OF OR RESULTING FROM THE NEGLIGENCE OF THE CONTRACTOR, OWNER OR ARCHITECT, AND APPLIES ONLY TO THE EXTENT OF THE NEGLIGENCE ATTRIBUTED TO SUCH ACTS OR OMISSIONS BY THE SUBCONTRACTOR, ITS SUB-SUBCONTRACTORS OF ANY TIER, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOM THEY MAY BE LIABLE. SUBCONTRACTOR’S OBLIGATIONS INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: (I) LOSSES FOR ANY ALLEGED OR ACTUAL VIOLATION OR INFRINGEMENT BY SUBCONTRACTOR (OR SUBCONTRACTOR’S EMPLOYEES OR SUBCONTRACTORS OR CONSULTANTS OR VENDORS OF ANY TIER) OF ANY LAW, STATUTE, CODES, SAFETY OR OCCUPATIONAL HEALTH ORDERS, RULES, REGULATIONS, STANDARDS, ORDERS OR ANY PATENT OR PATENT RIGHT; (II) LOSSES RESULTING FROM INJURY TO OR DEATH OF ANY PERSON (INCLUDING SUBCONTRACTOR’S EMPLOYEES) OR DAMAGE TO PROPERTY OF ANY KIND (INCLUDING ECONOMIC LOSS), INCLUDING THE SUBCONTRACTOR’S WORK OR THE WORK OF OTHERS ON THE PROJECT, WHICH INJURY, DEATH OR DAMAGE ARISES OUT OF OR IS IN ANY WAY CONNECTED WITH THE PERFORMANCE OF SUBCONTRACTOR’S WORK; (III) LOSSES ARISING FROM: (1) CONSTRUCTION LIENS, MECHANICS’ LIENS, OR OTHER MATERIALMAN’S LIEN OF ANY SORT, STOP NOTICE CLAIMS AND PAYMENT BOND CLAIMS MADE BY ANY SUB-SUBCONTRACTOR, SUPPLIERS, LABORERS, RENTAL COMPANIES, OR THE LIKE, AND (2) CLAIMS AND LIENS FOR LABOR TAXES, MATERIALS, APPLIANCES, EQUIPMENT, AND SUPPLIES WHATSOEVER, INCLUDING ANY COSTS, ATTORNEYS’ FEES, AND INCIDENTAL DAMAGE RESULTING THEREFROM; AND FOR FAILURE BY SUBCONTRACTOR OR ANY PARTY ACTING ON SUBCONTRACTOR’S BEHALF TO COMPLY WITH ALL LAWS, ORDINANCES AND REGULATIONS OF ALL GOVERNMENTAL AUTHORITIES IN ANY MANNER RELATING TO THE SUBCONTRACT WORK; AND (IV) LOSSES ARISING OUT OF ANY BREACH OF OR FAILURE OR ALLEGED FAILURE TO COMPLY WITH THE TERMS OF THE SUBCONTRACT DOCUMENTS.

SUBCONTRACTOR’S INDEMNITY AND HOLD HARMLESS OBLIGATIONS HEREUNDER SHALL APPLY TO ANY ACTS, OMISSIONS, WILLFUL MISCONDUCT, NEGLIGENT CONDUCT, OTHER FAULT, OF ANY PERSON OR ENTITY, INCLUDING BUT NOT LIMITED TO SUBCONTRACTOR’S AGENTS, EMPLOYEES, SUBCONTRACTORS, SUPPLIERS, AND ANY OTHER INDIVIDUAL OR ENTITY FOR WHOM SUBCONTRACTOR MAY BE RESPONSIBLE, WHETHER ACTIVE OR PASSIVE, AND WHETHER OR NOT SOLE OR CONCURRENT WITH THAT OF ANY OTHER PERSON OR ENTITY; EXCEPT THIS SECTION IS NOT INTENDED TO REQUIRE INDEMNIFICATION FOR A CLAIM, DAMAGE, LOSS OR EXPENSE TO THE EXTENT ARISING OUT OF OR RESULTING FROM THE NEGLIGENCE OF THE CONTRACTOR, OWNER OR ARCHITECT, AND APPLIES ONLY TO THE EXTENT OF THE NEGLIGENCE ATTRIBUTED TO SUCH ACTS OR OMISSIONS BY THE SUBCONTRACTOR, ITS SUB-SUBCONTRACTORS OF ANY TIER, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOM THEY MAY BE LIABLE.

SUBCONTRACTOR ACKNOWLEDGES THE SEPARATE AND INDEPENDENT DUTY TO DEFEND SET FORTH IN THIS PARAGRAPH, AND SHALL, REGARDLESS OF WHETHER ANY INDEMNIFICATION OBLIGATIONS LATER ARISES, AND IMMEDIATELY UPON TENDER, AT ITS OWN COST, EXPENSE AND RISK, IMMEDIATELY UPON TENDER DEFEND THE INDEMNITEES, WITH COUNSEL OF THE INDEMNITEES' CHOOSING, IN ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LIEN ACTIONS, SUITS OR OTHER LEGAL, ARBITRAL, ADMINISTRATIVE OR OTHER PROCEEDINGS WHICH MAY BE BROUGHT OR INSTITUTED AGAINST INDEMNITEES. IF AN INDEMNITEE IS FORCED TO PAY FOR ITS OWN DEFENSE BECAUSE SUBCONTRACTOR FAILS TO IMMEDIATELY COMPLY WITH ITS DEFENSE OBLIGATIONS SET FORTH IN THIS PARAGRAPH 7, SAID INDEMNITEE SHALL BE ENTITLED TO SIMPLE INTEREST ON THE PRINCIPAL BALANCE OF ATTORNEYS' FEES AND COSTS INCURRED AT THE RATE OF 1 ½% MONTHLY.

THE FOREGOING INDEMNITY AND DEFENSE OBLIGATIONS ARE NOT LIMITED BY THE AMOUNT OF ANY AVAILABLE INSURANCE AND ARE IN ADDITION TO ANY EXPRESS OR IMPLIED INDEMNITY OR CONTRIBUTION RIGHTS AVAILABLE TO ANY OF THE INDEMNITEES AT LAW OR IN EQUITY.

ALL WORK DONE AT THE SITE OR IN PREPARING OR DELIVERING MATERIALS OR EQUIPMENT, OR ANY OR ALL OF THEM, TO THE SITE SHALL BE AT THE RISK OF SUBCONTRACTOR EXCLUSIVELY UNTIL THE COMPLETED WORK IS ACCEPTED BY CONTRACTOR.

WITH RESPECT TO CLAIMS AGAINST AN INDEMNITEE ASSERTED BY AN EMPLOYEE OF SUBCONTRACTOR, BY AN EMPLOYEE OF ONE OF SUBCONTRACTOR'S SUBCONTRACTORS, BY AN EMPLOYEE OF ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR BY AN EMPLOYEE OF ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNITY OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR OR SUBCONTRACTOR'S SUBCONTRACTORS UNDER WORKER'S COMPENSATION ACTS, DISABILITY ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

ALL INDEMNITY OBLIGATIONS UNDER THE SUBCONTRACT DOCUMENTS SHALL APPLY TO CLAIMS ARISING BOTH BEFORE AND AFTER COMPLETION OF THE WORK UNDER THE SUBCONTRACT DOCUMENTS AND TO CLAIMS ARISING BOTH BEFORE AND AFTER THE TERMINATION OF ANY OF THE SUBCONTRACT DOCUMENTS. THE INDEMNITY OBLIGATIONS SET FORTH IN THIS OR IN ANY OTHER PROVISION OF THE SUBCONTRACT DOCUMENTS SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE ANY OTHER RIGHTS OF INDEMNITY ACCORDED BY LAW OR EQUITY TO THE INDEMNITEES.

CONTRACTOR SHALL BE ENTITLED TO RECOVERY OF ITS ATTORNEYS' FEES AND COSTS ASSOCIATED WITH ENFORCING ANY INDEMNITY AND DUTY TO DEFEND SET FORTH IN THE SUBCONTRACT DOCUMENTS.

The following modifications to Section 7 of the Terms and Conditions of the MSA shall apply in Oregon:

- The second paragraph of Section 7, Line 6, the word "ACTIVE" shall be deleted.

The following modifications to Section 7 of the Terms and Conditions of the MSA shall apply in Texas:

- Section 7 shall be deleted in its entirety and replaced with:

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUBCONTRACTOR SPECIFICALLY OBLIGATES ITSELF TO PROTECT, IMMEDIATELY DEFEND, INDEMNIFY AND HOLD CONTRACTOR,

OWNER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES AND ANY OTHER PERSON INDEMNIFIED BY OWNER (HEREINAFTER "INDEMNITEES") HARMLESS AGAINST CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, INCLUDING ANY FEES OF ACCOUNTANTS, ATTORNEYS, EXPERTS OR OTHER PROFESSIONALS, OR INVESTIGATION EXPENSES (HEREINAFTER "LOSSES"), ARISING OUT OF, RESULTING FROM, OR IN ANY WAY CONNECTED WITH THE SUBCONTRACTOR'S OPERATIONS AND THE WORK. SUBCONTRACTOR'S OBLIGATIONS INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: (I) LOSSES FOR ANY ALLEGED OR ACTUAL VIOLATION OR INFRINGEMENT BY SUBCONTRACTOR (OR SUBCONTRACTOR'S EMPLOYEES OR SUBCONTRACTORS OR CONSULTANTS OR VENDORS OF ANY TIER) OF ANY LAW, STATUTE, CODES, SAFETY OR OCCUPATIONAL HEALTH ORDERS, RULES, REGULATIONS, STANDARDS, ORDERS OR ANY PATENT OR PATENT RIGHT; (II) LOSSES RESULTING FROM INJURY TO OR DEATH OF ANY PERSON (INCLUDING SUBCONTRACTOR'S EMPLOYEES) OR DAMAGE TO PROPERTY OF ANY KIND (INCLUDING ECONOMIC LOSS), INCLUDING THE SUBCONTRACTOR'S WORK OR THE WORK OF OTHERS ON THE PROJECT, WHICH INJURY, DEATH OR DAMAGE ARISES OUT OF OR IS IN ANY WAY CONNECTED WITH THE PERFORMANCE OF SUBCONTRACTOR'S WORK; (III) LOSSES ARISING FROM: (1) CONSTRUCTION LIENS, MECHANICS' LIENS, OR OTHER MATERIALMAN'S LIENS OF ANY SORT, STOP NOTICE CLAIMS AND PAYMENT BOND CLAIMS MADE BY ANY SUB-SUBCONTRACTORS, SUPPLIERS, LABORERS, RENTAL COMPANIES, OR THE LIKE, AND (2) CLAIMS AND LIENS FOR LABOR TAXES, MATERIALS, APPLIANCES, EQUIPMENT, AND SUPPLIES WHATSOEVER, INCLUDING ANY COSTS, ATTORNEYS' FEES, AND INCIDENTAL DAMAGE RESULTING THEREFROM; AND FOR FAILURE BY SUBCONTRACTOR OR ANY PARTY ACTING ON SUBCONTRACTOR'S BEHALF TO COMPLY WITH ALL LAWS, ORDINANCES AND REGULATIONS OF ALL GOVERNMENTAL AUTHORITIES IN ANY MANNER RELATING TO THE SUBCONTRACT WORK; AND (IV) LOSSES ARISING OUT OF ANY BREACH OF OR FAILURE OR ALLEGED FAILURE TO COMPLY WITH THE TERMS OF THE SUBCONTRACT DOCUMENTS.

SUBCONTRACTOR'S INDEMNITY AND HOLD HARMLESS OBLIGATIONS HEREUNDER SHALL APPLY TO ANY ACTS, OMISSIONS, WILLFUL MISCONDUCT, NEGLIGENT CONDUCT, OTHER FAULT, OR LIABILITY WITHOUT FAULT OF ANY PERSON OR ENTITY FOR WHOM SUBCONTRACTOR IS OR MAY BE RESPONSIBLE, WHETHER ACTIVE OR PASSIVE, AND WHETHER OR NOT SOLE OR CONCURRENT WITH THAT OF ANY OTHER PERSON OR ENTITY; EXCEPT THAT THIS INDEMNITY OBLIGATION SHALL NOT REQUIRE THAT SUBCONTRACTOR INDEMNIFY INDEMNITEES HEREIN AGAINST CLAIMS ARISING FROM HIS, HER, OR ITS NEGLIGENCE OR WILLFUL MISCONDUCT.

SUBCONTRACTOR ACKNOWLEDGES THE SEPARATE AND INDEPENDENT DUTY TO DEFEND SET FORTH IN THIS PARAGRAPH, AND SHALL DEFEND THE REFERENCED PARTIES UPON DEMAND REGARDLESS OF WHETHER ANY INDEMNIFICATION OBLIGATIONS LATER ARISES. SUBCONTRACTOR AGREES THAT IT SHALL (AT THE OPTION OF THE INDEMNITEE) AT ITS OWN COST, EXPENSE AND RISK, IMMEDIATELY UPON TENDER DEFEND THE INDEMNITEES, WITH COUNSEL OF THE INDEMNITEES' CHOOSING, IN ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LIEN ACTIONS, SUITS OR OTHER LEGAL, ARBITRAL, ADMINISTRATIVE OR OTHER PROCEEDINGS WHICH MAY BE BROUGHT OR INSTITUTED AGAINST INDEMNITEES. SUBCONTRACTOR'S DUTY TO DEFEND THE INDEMNITEES SHALL ARISE IMMEDIATELY UPON NOTIFICATION AND DEMAND BY AN INDEMNITEE TO SUBCONTRACTOR. IF AN INDEMNITEE IS FORCED TO PAY FOR ITS OWN DEFENSE BECAUSE SUBCONTRACTOR FAILS TO IMMEDIATELY COMPLY WITH ITS DEFENSE OBLIGATIONS SET FORTH IN THIS PARAGRAPH 7, SAID INDEMNITEE SHALL BE ENTITLED TO SIMPLE INTEREST ON THE PRINCIPAL BALANCE OF ATTORNEYS' FEES AND COSTS INCURRED AT THE RATE OF 1 ½% MONTHLY.

THE FOREGOING INDEMNITY AND DEFENSE OBLIGATIONS ARE NOT LIMITED BY THE AMOUNT OF ANY AVAILABLE INSURANCE AND ARE IN ADDITION TO ANY EXPRESS OR IMPLIED INDEMNITY OR CONTRIBUTION RIGHTS AVAILABLE TO ANY OF THE INDEMNITEES AT LAW OR IN EQUITY.

ALL WORK DONE AT THE SITE OR IN PREPARING OR DELIVERING MATERIALS OR EQUIPMENT, OR ANY OR ALL OF THEM, TO THE SITE SHALL BE AT THE RISK OF SUBCONTRACTOR EXCLUSIVELY UNTIL THE COMPLETED WORK IS ACCEPTED BY CONTRACTOR.

WITH RESPECT TO CLAIMS AGAINST AN INDEMNITEE ASSERTED BY AN EMPLOYEE OF SUBCONTRACTOR, BY AN EMPLOYEE OF ONE OF SUBCONTRACTOR'S SUBCONTRACTORS, BY AN EMPLOYEE OF ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR BY AN EMPLOYEE OF ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNITY OBLIGATIONS SET FORTH HEREIN SHALL APPLY REGARDLESS OF WHETHER THE BODILY INJURY SICKNESS, DISEASE OR DEATH OF SUCH EMPLOYEE IS CAUSED OR IS ALLEGED TO BE CAUSED BY THE NEGLIGENCE OF AN INDEMNITEE, IT BEING THE EXPRESS INTENT OF CONTRACTOR AND SUBCONTRACTOR THAT SUBCONTRACTOR IS TO DEFEND, INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS FROM THEIR OWN NEGLIGENCE, WHETHER IT IS THE SOLE OR THE CONCURRING CAUSE OF THE OF THE BODILY INJURY, SICKNESS OR DEATH. SUBCONTRACTOR'S INDEMNITY OBLIGATIONS FOR SUCH CLAIMS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR OR SUBCONTRACTOR'S SUBCONTRACTORS UNDER WORKER'S COMPENSATION ACTS, DISABILITY ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

ALL INDEMNITY OBLIGATIONS UNDER THIS SUBCONTRACT AGREEMENT SHALL APPLY TO CLAIMS ARISING BOTH BEFORE AND AFTER COMPLETION OF THE WORK UNDER THE SUBCONTRACT DOCUMENTS AND TO CLAIMS ARISING BOTH BEFORE AND AFTER THE TERMINATION OF ANY OF THE SUBCONTRACT DOCUMENTS.

THE INDEMNITY OBLIGATIONS SET FORTH IN THIS OR IN ANY OTHER PROVISION OF THE SUBCONTRACT DOCUMENTS SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE ANY OTHER RIGHTS OF INDEMNITY ACCORDED BY LAW OR EQUITY TO THE INDEMNITEES. CONTRACTOR SHALL BE ENTITLED TO RECOVERY OF ITS ATTORNEYS' FEES AND COSTS ASSOCIATED WITH ENFORCING ANY INDEMNITY AND DUTY TO DEFEND SET FORTH IN THE SUBCONTRACT DOCUMENTS.

The following modifications to Section 7 of the Terms and Conditions of the MSA shall apply in Washington:

- **The second paragraph of Section 7, Line 6, the word "ACTIVE" shall be replaced with "SOLE."**
- **The second paragraph of Section 7, the following shall be added at the end of the paragraph:**

WITH RESPECT TO CLAIMS ARISING OUT OF THE CONCURRENT NEGLIGENCE OF SUBCONTRACTOR AND AN INDEMNITEE, THIS SECTION APPLIES TO THE EXTENT OF SUBCONTRACTOR'S NEGLIGENCE.

- **The sixth paragraph of Section 7 shall be deleted in its entirety and replaced with:**

WITH RESPECT TO CLAIMS AGAINST AN INDEMNITEE, ASSERTED BY AN EMPLOYEE OF SUBCONTRACTOR, BY AN EMPLOYEE OF ONE OF SUBCONTRACTOR'S SUBCONTRACTORS, BY AN EMPLOYEE OF ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR BY AN EMPLOYEE OF ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, SUBCONTRACTOR'S INDEMNITY OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR OR SUBCONTRACTOR'S SUBCONTRACTORS UNDER WORKER'S COMPENSATION ACTS, DISABILITY ACTS, OR OTHER EMPLOYEE BENEFIT ACTS, INCLUDING BUT NOT LIMITED TO RCW 51, ET. SEQ.

The following modifications to Section 7 of the Terms and Conditions of the MSA shall apply in New York:

- **The second paragraph of Section 7, Line 6, the words “FOR BODILY INJURY OR DAMAGE TO PROPERTY” shall be added after the word “CLAIMS” and the word “ACTIVE” shall be deleted.**
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