



SUBCONTRACT

PO No.

between

Effective Date

CONTRACTOR

and

SUBCONTRACTOR

Name Johnson Controls, Inc. ("Buyer", "Contractor", or "JCI")
Address Branch Address
City, State, ZIP Branch City, State or Province Branch Postal Code

Name Subcontractor Company Name
Address Subcontractor Address
City, State, ZIP City, State or Province Postal Code

Project Name Project Name	JCI Contract No. XXXX-XXXX	Address Project Address
City, State, ZIP City, State or Province Postal Code		Description

SUBCONTRACTOR

Name (typed) Subcontractor Representative's Name	Title Subcontractor Representative's Role
Signature	Date

JOHNSON CONTROLS, INC.

Name (typed)	Title
Signature	Date

WORK TO BE PERFORMED: Subcontractor agrees to furnish all supervision, labor, materials, equipment, tools, incidentals and other items pursuant to the terms and conditions of this Subcontract and as set forth in an associated Statement of Work ("SOW"), purchase order ("Order"), Change Order, or other ordering document (individually and collectively an "Order") issued by Buyer (hereinafter "Work").

SUBCONTRACT PRICE: The Subcontract Price set forth in the Order includes all local, state and federal taxes that may be due or charged by reason of performance of this Subcontract including, but not limited to, licenses, royalty payments, fees, costs, overhead, profit, labor, materials, insurance, payment and performance bonds (as required by and noted herein by the Contractor) and includes any and all costs and expenses incurred in connection with the completion of the Work. No additional amounts shall be paid to Subcontractor other than the Subcontract Price, unless a written Change Order executed by an authorized representative of Contractor has been issued.

COMPLETION DATE: Subcontractor agrees to complete all Work as set forth in the SOW. Subcontractor acknowledges and agrees that the completion date is set so as to permit Contractor to complete its scope of work by the project completion date set forth in the Contract Documents.

SUBCONTRACT: The "Agreement" between the parties consists of (a) this Subcontract including the Subcontract Terms and Conditions (US) attached hereto; (b) the Contract Documents; and (c) all applicable Attachments and Orders. The foregoing documents (and any amendments or modifications thereto) constitute the entire and integrated understanding and agreement between the Contractor and Subcontractor with respect to the subject matter hereof, and supersedes all prior understandings, representations, communications and agreements, whether written or verbal. In the event of any conflict between any Attachment and this Subcontract, this Subcontract will control except to the extent that any of the Attachments contain terms more favorable to Contractor. The terms and conditions of this Subcontract take precedence over the terms and conditions of any other agreement between Contractor and Subcontractor, as it relates to the Scope of Work described herein. For purposes of this Subcontract, the Contract Documents applicable to the Work to be performed by Subcontractor consist of all higher tier contracts (including but not limited to the Contract between the Owner and General Contractor the "Prime Contract") and all general, supplementary and other conditions together with the drawings, specifications and all addenda. Notwithstanding the foregoing, if any terms and conditions contained in an Order including the [Global Terms of Purchase](#) conflict with any terms and conditions contained in this Subcontract, the order of precedence is: (a) the applicable Order terms, and (b) this Subcontract.



SUBCONTRACT TERMS AND CONDITIONS (US)

The Attachments to this Subcontract may include any of the following:

Attachment 1 - Scope of Work	Attachment 2 - Application and Certificate for Payment
Attachment 3 - Partial Waiver of Claims and Liens	Attachment 4 - List of Subcontractors and Material Suppliers
Attachment 5 - Request for Information	Attachment 6 - Subcontract Request for Change Order
Attachment 7 - Subcontract Change Order	Attachment 8 - Certificate of Completion and Request for Final Payment
Attachment 9 - Final Waiver and Release of Liens	Attachment 10 - Johnson Controls Ethics Policy
Attachment 11 - Subcontractor Safety Specifications	Attachment 12 - Minority/Diversity Owned Business Enterprise Status
Attachment 13 - FAR Flowdown for Subcontracts	

Subcontractor shall furnish all the items below upon Contractor’s request - all of which will form a part of the Agreement:

<ul style="list-style-type: none"> - Certificate of Insurance - Subcontractor License Number - NAICS – SIC Code - Prevailing Wage Schedule - Certified Payroll 	<ul style="list-style-type: none"> - Tax ID Number - Business License Number - Alternative Method of Scheduling (Description) - Payment & Performance Bond
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Definitions: For purposes of this Subcontract:

- “Bond” when required by Contractor, Subcontractor shall provide performance and payment bonds in the dollar amounts specified by Contractor, with sureties rated no less than an Excellent (A, A-) rating by A.M. Best Company or otherwise acceptable to Contractor, dated as of the date of the Order. Subcontractor shall not be entitled to any payment until such Bond(s) have been provided and the cost of such Bond(s) shall be included in the Subcontract Price. No additional cost for Bond(s) will be considered by the Contractor.
- “Certificate of Insurance” and “Insurance” shall be as defined in Section 5 of this Subcontract.
- “Change Order” shall be as defined in Section 4 of this Subcontract.
- “Completion Date” shall be as defined in the face page of this Subcontract.
- “Contract Documents” shall mean the contract between Contractor and its customer, any and all documents incorporated therein, any and all other higher-tier contracts, general conditions, supplementary and other conditions, the Drawings, revisions to Drawings, Specifications, addenda to the Specifications, and change orders issued to the Contractor. Contract Documents are available for Subcontractor’s review at Contractor’s office. Subcontractor may make copies of the Contract Documents at Subcontractor’s expense.
- “Day” means a calendar day.
- “Drawings” shall mean any and all graphic or pictorial presentations of the designer that shows the design, dimensions, plans, elevations, layouts, diagrams, schematics, schedules, and views of the Project.
- “Project” shall mean the complete facility, building or improvement to reality described by all the Contract Documents of all contractors.
- “Project Schedule” shall mean the completion schedule for the Project as issued by Contractor’s Customer from time to time.
- “Scope of Work” or “SOW” shall mean the work specified in Attachment 1 to be performed in accordance with the terms of this Subcontract.
- “Specifications” shall mean the written presentation of the Project requirements for materials, systems, equipment, standards, workmanship levels, service details, and the integration of all aspects of the Project.
- “Subcontract” shall mean the total and cumulative rights and duties of the parties under this Agreement.
- “Sub-Subcontractor” shall mean those Sub-Subcontractors as described in paragraph 7.2 of this Agreement.
- “Work” shall mean the actual construction and furnishing of labor, services and materials necessary to complete fully all of the terms and conditions of this Agreement including, but not limited to, the Scope of Work set forth in Attachment 1.
- An “MBE” shall mean a for-profit enterprise, regardless of size, physically located in the United States or its trust territories, which meets the criteria established by the National Minority Supplier Development Council (<https://nmsdc.org/mbes/what-is-an-mbe/>) or as otherwise specified in the Prime Contract.



SUBCONTRACT TERMS AND CONDITIONS (US)

1. CONTRACT DOCUMENTS/WORK

1.1 Quality of Work

Subcontractor shall perform the Work in strict compliance with this Subcontract, the Contract Documents, the project schedule and all applicable laws. Subcontractor agrees that the quality of the Work to be performed under this Subcontract shall be of the same quality required by the Contract Documents, or if none is specified then with due care and diligence. Subcontractor also agrees to perform the Work with the same degree of skill and to assume the same risks, duties and obligations as Contractor is obligated to assume pursuant to the Contract Documents. Subcontractor agrees to perform all Work, and furnish and supply all equipment, supplies, materials, labor and services which may be required or reasonably implied from the Contract Documents for the complete performance of the Work.

Subcontractor shall commence Work upon receipt of a notice to proceed issued by Contractor. Prior to commencement of the Work, Subcontractor shall meet with Contractor to review the construction schedule, payment procedures and all other areas of Subcontractor's performance under this Subcontract. Subcontractor shall additionally participate in any such meeting required by the Contract Documents.

1.2 Examination of Contract Documents and Site

Subcontractor represents that it has had full opportunity to review and has carefully examined all of the Contract Documents, the Project and site. Subcontractor warrants that it has satisfied itself as to the character, quality and quantity of Work to be performed, the conditions that will be encountered at the site or otherwise affect the cost or difficulty of performing the Work, the materials and equipment and other items to be furnished, and all other requirements of the Contract Documents and this Subcontract.

1.3 Intent of Subcontract and Contract Documents

The intent of the Subcontract is for Subcontractor to furnish all permit, fees, labor, materials, equipment, tools, plans, water, light, power and other items necessary for complete and finished Work. This Subcontract and the Contract Documents shall be construed as a whole. They are intended to supplement and complement each other, and shall, where possible, be so interpreted, and what is called for by any one shall be as binding as if called for by all. Subcontractor agrees to assume towards Contractor, in connection with the Work required by this Subcontract, all of the duties, obligations and responsibilities which Contractor agreed to undertake towards Contractor's Customer pursuant to the Contract Documents including but not limited to liquidated damages, scheduling, builder's risk insurance, general liability insurance, warranties, force majeure, clean-up, termination for default, termination for convenience, and indemnity.

The titling and division of Drawings and Specifications by trades or other classifications is for convenience only and the fact that any part of the Work should or could probably have been shown or specified under some other title or division shall not relieve the Subcontractor of performing or furnishing the required Work, nor entitle Subcontractor to extra compensation.

1.4 Conflicts in or Omission from Subcontract or Contract Documents

If Subcontractor believes that there is or may be any omission from the Contract Documents, or any conflict between this Subcontract and the Contract Documents, or if Subcontractor has any doubt as to the meaning thereof, Subcontractor shall immediately submit the matter to Contractor in accordance with the Request for Information set forth as Attachment 5. Any Work performed before Contractor responds to the Request for Information shall be at Subcontractor's sole risk and expense. Upon receipt of Subcontractor's Request for Information, Contractor will issue, within a reasonable time, a written response or appropriate Change Order pursuant to the Changes paragraph.

Notwithstanding the provisions of this paragraph, there shall be neither an increase in the Fixed Subcontract Price, nor an extension of the Completion Date on account of any misdescription in or omission from this Subcontract or the Contract Documents of details of the Work which are clearly necessary to carry out the intent of the Contract Documents or which are customarily performed or furnished by contractors performing work similar to the Work described in the Subcontract for a complete finished job. Such misdescribed or omitted details shall be performed or furnished by Subcontractor at no cost to Contractor as if fully and clearly set forth in the documents.

If any provision of this Subcontract irreconcilably conflicts with a provision of the Contract Documents, the provision granting greater rights or remedies to Contractor, or imposing the greater duty, standard, responsibility or obligation on the Subcontractor shall govern. In the event of a direct conflict between or among any of the Contract Documents, the order of precedence to resolve the conflict shall be as follows: first, the contract between the Contractor and its customer; second, the Project Specifications and any addenda thereto; third, the Project Drawings and any revisions thereto; and fourth, this Subcontract shall control.

1.5 Temporary Facilities

Unless otherwise specified or agreed, Subcontractor shall provide all temporary sheds, offices and utilities in order to complete the Work. Subcontractor shall arrange for temporary utility connections including but not limited to water, electricity, telephone, gas, compressed air, steam, heat and other similar services. All temporary services shall be secured and Subcontractor shall pay for the use or consumption of such services and facilities. Upon completion of the Work all temporary construction, signs and facilities shall be removed by Subcontractor at its expense.

1.6 Material and Workmanship

Unless otherwise specifically provided in this Subcontract, all material to be incorporated in the Work shall be new, of the most suitable grade for the purpose intended and in compliance with the terms and conditions of the Contract Documents. All Work shall be performed in a skillful and workmanlike manner, and in accordance with the Contract Documents. Contractor may, in writing, require Subcontractor to remove from the Project any employee of Subcontractor who Contractor deems incompetent, careless or otherwise objectionable.

1.7 Conduct of Supplier Personnel.



SUBCONTRACT TERMS AND CONDITIONS (US)

Whenever present at the worksite, (a) the Subcontractor shall comply and shall cause its personnel to comply with any and all applicable health, safety and environmental laws and regulations, all worksite policies and procedures, and all reasonable instructions or directions issued by Contractor, and otherwise conduct themselves in a businesslike manner; and (b) Subcontractor personnel shall at all times carry photo identification and shall dress in a manner appropriate in light of their job function and the environment in which they work. Hard hats, work boots, and any other necessary safety gear are required on all construction sites. No signs for Subcontractor shall be displayed on the worksite without Contractor's prior written consent. Upon Contractor's request, Subcontractor shall remove any of its personnel for any reason from the Work. Subcontractor shall promptly cause such person(s) to be removed and replaced at no cost to Contractor; notwithstanding the foregoing, Subcontractor shall retain the sole right to hire and fire its personnel, and shall be solely responsible for oversight of its personnel.

1.8 Compliance with Applicable Laws

Subcontractor shall comply with all applicable federal, state and local laws, ordinances and codes and all lawful orders, rules and regulations thereunder. Subcontractor shall, without additional expense to Contractor, obtain all licenses and permits required for the prosecution of the Work. Contractor makes no express or implied representations concerning the applicability of any prevailing wage requirements to the Work to be performed under this Subcontract, and Subcontractor shall be liable to Contractor for any prevailing wage assessments against Contractor in connection with Subcontractor's Work unless specifically waived in writing by Contractor.

1.9 Warranty

Subcontractor warrants that all material furnished and all Work performed will be free from defects in material and workmanship for a period of one year (or such longer period as may be specified elsewhere in the Contract Documents including any higher-tier contract) after final acceptance of the Work by the Owner of the completed Project. Subcontractor shall, at no cost to Contractor, promptly and satisfactorily replace any material and correct any workmanship found to be defective or otherwise not in conformity with the Subcontract requirements and remedy any damage to other parts of the work resulting therefrom. Subcontractor shall also assume any additional warranty responsibilities required by the Contract Documents.

2. SCHEDULE AND COMPLETION

2.1 Construction Schedule

Time is the essence of this Subcontract. The Subcontractor shall furnish a schedule in accordance with the Project Schedule and the Completion Date to Contractor for Contractor's approval. If no Completion Date is otherwise specified in this Subcontract, the Subcontractor shall complete the Work as required by the Project Schedule or otherwise in accordance with the Contract Documents. Contractor shall have the right to require that the Work be performed consistently with the progress of the work of the Contractor and of other contractors or subcontractors at the construction site. The method of Subcontractor's scheduling of the Work shall be performed by Subcontractor in accordance with the method identified in the

Contract Documents. If no method is described in the Contract Documents, and Contractor does not direct otherwise, any generally accepted method of critical path scheduling shall be acceptable.

Prior to commencing Work, the Subcontractor shall deliver to Contractor (1) Certificates of Insurance; (2) required Bonds; (3) a copy of Subcontractor's Schedule; and (4) a list of any conflict or omissions, if any, (pursuant to paragraph 1.4).

Upon receipt of such documents, Contractor shall issue a notice to proceed. Issuance of the notice to proceed prior to receipt of the referenced documents shall not be considered a waiver by Contractor of the requirements of this paragraph.

2.2 Inspection

All material and workmanship shall be subject to inspection and test by Contractor at all reasonable times and places. If the Work is found to be defective or nonconforming in any material respect due to the fault of Subcontractor, Subcontractor shall bear the cost and expense of examination, inspection and satisfactory correction and reconstruction of the non-conforming Work.

2.3 Sequence and Timing of the Work

Contractor has the right but not the duty to determine the sequence and timing of the Work. If Contractor exercises its right, then Contractor may reasonably direct the sequence and timing of the Work as required by the Contract Documents. If Contractor exercises its right under this paragraph, then Contractor may authorize an extension in the Completion Date of this Subcontract or issue a Change Order in accordance with this Subcontract.

3. PAYMENT

3.1 Progress Payments

The Fixed Subcontract Price stated in this Subcontract shall represent Subcontractor's full compensation for performing all the Work required by this Subcontract, subject to adjustments as otherwise provided in this Subcontract.

Contractor shall make periodic progress payments to the Subcontractor in accordance with the same terms and conditions, including retainage, as provided in the Contract Documents. Payments shall be payable to Subcontractor by the Contractor only if and to the extent Contractor has received payment therefore. Payment shall be made by Contractor to Subcontractor as soon as practical after receipt by Contractor of payment allocable to the Fixed Subcontract Price. Payment to the Subcontractor is specifically agreed not to constitute or imply acceptance by the Contractor or Contractor's Customer of any portion of Subcontractor's Work.

Before the Subcontractor submits its first Application for Payment, the Subcontractor shall submit to Contractor a Certified List of Sub-Subcontractors in the form attached as Attachment 4 and a Schedule of Values in the form attached as Attachment 2. After submission of the Certified List of Subcontractors, and the Schedule of Values, Contractor shall review, and, if acceptable to Contractor, approve the completed Attachments.

Subcontractor shall submit to Contractor an Application for Payment in accordance with Attachment 2, in sufficient time for Contractor to review and approve the Application and include the Application in Contractor's application for payment. Subcontractor's Application for Payment shall include: (1) the approved Certified List of Subcontractors; (2) the approved Schedule of Values completed in accordance with the actual completion of the Work as of the date of the Application, or through the end of the month as required by Contractor; (3) a fully executed Waiver of Liens and Claims in the form set forth as Attachment 3, and (4) fully executed Sub-Subcontractors' Waiver of Liens and Claims in the form set forth as Attachment 3.

Upon receipt of Subcontractor's complete Application for Payment, Contractor shall have fourteen (14) days to: (1) accept the Application for Payment, (2) accept in part or reject in part the Application for Payment, or (3) reject the Application for Payment and request re-submission. If the Application for Payment is rejected in any part, Contractor shall state its reasons for the rejection. Subcontractor may re-submit its Application for Payment or part thereof to correct the reason for rejection. Any resubmission shall be completed in sufficient time for Contractor to include the Subcontractor's Application for Payment in Contractor's application for payment. Acceptance by Contractor of the Application for Payment in whole or part shall not be construed in any manner as acceptance of the Work completed by Subcontractor as in conformity with the Contract Documents.

3.2 Final Payment

In addition to meeting the requirements set forth in paragraph 3.1, as part of the Application for Final Payment, and in order to complete the Work by the Completion Date, the Subcontractor shall comply with all of the Contract Documents' requirements for Project closeout, including but not limited to, completion of final punch list items, warranty commencement, obtaining any applicable certificates of occupancy, and furnishing any documents, certificates, or approvals by jurisdictions having authority over the Project.

Upon receipt of Subcontractor's Application for Final Payment, Contractor shall have a reasonable time to: (1) accept the Application for Final Payment, (2) accept in part or reject in part the Application for Final Payment, or (3) reject the Application for Final Payment and request re-submission. If the Application for Final Payment is rejected in any part, Contractor shall state its reasons for the rejection. Subcontractor may re-submit its Application for Final Payment. Acceptance by Contractor of the Application for Final Payment in whole or part shall not be construed in any manner as acceptance of the Work completed by Subcontractor as in conformity with the Contract Documents.

Contractor shall make the Final Payment to the Subcontractor if and only if Contractor has received final payment from Contractor's Customer. Contractor shall have the right to withhold from any Payments and to recover any and all amounts necessary to cover costs that may be incurred by Contractor as a result of Subcontractor's unsatisfactory job progress, including costs associated with supplementation of Work; defective construction not remedied; disputed work; third-party claims filed or reasonable evidence that such claims may be filed; failure of Subcontractor to make timely payments for labor, equipment and materials; reasonable evidence that the Subcontract cannot be completed for the unpaid balance of the Fixed Subcontract Price; and retainage.

3.3 Stored Materials

If the Contract Documents authorize the payment for Subcontractor furnished materials stored either on-site or off-site, Subcontractor may include the value of its supplied and stored materials in its Application for Payment. Subcontractor must also submit to Contractor sufficient documentation to value properly the stored materials. Additionally, Subcontractor shall submit for Contractor's approval, sufficient evidence of insurance that covers the stored materials in case of any loss. Any cost of insurance shall be borne by Subcontractor. Any cost associated with the transportation of the stored materials to the site shall be included in the Fixed Subcontract Price. Warranties for Subcontractor furnished and stored materials shall not commence until final completion of the Project or such other time as agreed in writing by Contractor.

4. CHANGE ORDERS

4.1 Changes

Contractor may at any time, by written orders in the form of Attachment 7, and without notice to the sureties, modify, change, omit or add to the Work to be performed pursuant to this Subcontract (a "Change Order"). If any such Change Order affects the cost of, or the time required for, performance of this Subcontract, an equitable adjustment in the Fixed Subcontract Price or the Completion Date shall be made. Where necessary to prevent undue delay, Contractor may issue a Change Order before agreement as to an equitable adjustment has been reached. In such event, Subcontractor shall immediately proceed in accordance therewith notwithstanding any delay in reaching agreement. Neither the issuance, nor performance of such a Change Order shall prejudice the rights of either party as to the adjustments, if any, either may be entitled to on account of such a Change Order.

Subcontractor within three (3) days after the Subcontractor knows or reasonably should know that work will be required outside the Scope of Work, must submit a Request for Change Order in accordance with Attachment 6. Unless a request for Change Order is submitted within the time specified in this paragraph, Subcontractor is not entitled to any extra compensation and Subcontractor acknowledges its failure to submit such request constitutes such a waiver.

Contractor has the right but not the duty to order minor changes in the Work that neither impact the Fixed Subcontract Price, nor the Completion Date. Contractor shall order minor changes in the Work by issuance of a Change Order in accordance with Attachment 7.

Any Change Order issued pursuant to this paragraph shall not in any way nullify the terms and conditions of this Subcontract.

4.2 Extra Compensation

No claim by Subcontractor for any extra compensation in connection with this Subcontract shall be enforceable against Contractor unless Subcontractor's claim is based upon a written Change Order issued by Contractor pursuant to the Changes paragraph. Contractor will pay for extra work arising from changes upon the same terms and conditions as set forth in the Contract Documents, but only to the extent that Contractor is actually paid for the extra work.



SUBCONTRACT TERMS AND CONDITIONS (US)

To the extent the previous paragraph may not apply, claims by Subcontractor shall be based upon itemized costs including but not limited to labor including burden, copies of invoices, overhead, and profit. Subcontractor's claims shall be fully supported by original documentation submitted with such claims. Such claims shall be limited to actual costs incurred by Subcontractor related to the specific claim for labor and material, 0% overhead and 0% profit. No total cost, modified total cost or other methods of calculating quantum that do not segregate the costs specifically associated with each claim shall be permitted. Contractor's obligation to compensate Subcontractor for overtime work directed by Contractor and not caused by Subcontractor (due to its default of Subcontractor or Subcontractor's failure to maintain adequate progress of the Work) shall be limited to the premium time portion of overtime wages. Contractor's obligation to pay extra compensation under this paragraph shall arise if and only if Subcontractor fully performs all of its obligations under this Subcontract, including but not limited to compliance with this paragraph.

All claims for extra compensation must be submitted to Contractor by Subcontractor within (a) thirty (30) days following substantial completion of the changed Work or (b) at the time of Subcontractor's Application for Final Payment, whichever occurs first. The exact amount of the claim shall be stated and may not be subsequently increased. Such claims shall also be accompanied by a written certification indicating that such claims comply with this paragraph; the information contained in such claims is accurate, complete and current as of the date of submission of the claim; and additional information relevant to the claim will be provided to Contractor as soon as such information becomes available. Any claim for extra compensation not made in accordance with these requirements will be deemed waived by Subcontractor.

4.3 Damages

Contractor shall recover all damages, costs and expenses, including compensation for direct and overhead costs, resulting from any breach of this Subcontract by Subcontractor. To the extent that Contractor has been backcharged or otherwise has paid damages to the Contractor's Customer, higher-tier contractor, or the owner, including payment of liquidated damages, as a result of alleged defaults or nonperformance by Subcontractor, such backcharges shall be presumed to be valid unless Subcontractor disputes the validity and amount of such backcharges within 10 days after the time when Subcontractor first becomes aware of such backcharges and agrees in writing to indemnify, defend and hold Contractor harmless for any loss, costs or expense incurred by Contractor, including interest on amounts held by the Owner, higher-tier contractor or Contractor's Customer, as a result of such dispute.

As time is of the essence in the performance and completion of the Work, should the Subcontractor fail to complete the Work, within the time and manner specified, or within the time of such extensions as may be granted or approved by Contractor, Subcontractor shall be liable to Contractor for any damages suffered by Contractor by reason of such delay, and Contractor shall and may deduct and retain the amount of such damages out of money which may be due or become due under this Subcontract.

The provisions of this paragraph shall control unless Contractor and Subcontractor specifically agree in writing to a fixed and determined sum which shall be paid by Subcontractor to Contractor for each and every day of delay which sum shall be liquidated damages that Contractor will suffer by reason of said delay and not as a penalty.

4.4 Damages Limitations. In no event shall Contractor or any party included in the definition of Indemnitees above be liable to Subcontractor or any of its sub-subcontractors, whether based on delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, for any consequential, special, incidental, indirect, exemplary or punitive damages or any other damages constituting, or arising from or in connection with loss of revenue or profit, actual or anticipated or otherwise, and Subcontractor hereby releases each of the Indemnitees from any such liability. Subcontractor shall obtain similar releases from each of its sub-subcontractors.

5. INSURANCE AND INDEMNITY

5.1 Insurance

Subcontractor shall obtain and maintain the insurance required by Contractor from qualified insurance carriers who are A. M. Best Company rated no less than 'Secure Rating' of A-, or better, and 'Financial Size Category' rating of FCS VII, or larger. Subcontractor shall name Contractor, any higher-tier contractor and Owner as an additional insured under the general liability and auto liability policies. All policies furnished by Subcontractor shall be primary and non-contributory. Subcontractor's insurance policy shall also provide contractual coverage for Subcontractor's indemnity obligation required by paragraph 5.3 of this Agreement. All policies, with the exception of Workers' Compensation, shall be on an occurrence form. The insurance shall not be cancelled unless Contractor is given thirty (30) days' notice in advance of the cancellation date and Subcontractor has made arrangements for replacement insurance under this paragraph. Subcontractor shall furnish an insurance certificate demonstrating coverage that meets the greater of the following requirements or the insurance required in the Contract Documents:

<u>COVERAGES</u>	<u>LIMITS OF LIABILITY</u>
Workmen's Compensation	Statutory
Employer's Liability	\$500,000/Each Accident \$500,000/Disease Each Employee \$500,000/Disease Policy Limit
Commercial General Liability Insurance, including Contractual Liability Coverage that includes coverage for the indemnity provision of paragraph 5.3 of this Subcontract	\$2,000,000 Each occurrence limit, general aggregate limit and products and completed operations aggregate limit Note 1, Note 2
Comprehensive Automobile Liability Insurance	\$1,000,000 Each occurrence, combined single limit Note 2



SUBCONTRACT TERMS AND CONDITIONS (US)

Note 1: This limit of liability can be satisfied by any combination of primary and umbrella or excess liability insurance.

Note 2: Subcontractor shall name Contractor, higher tier Contractor's and Contractor's Customer as an additional insured under the general liability and automobile liability policies.

5.2 Risk of Loss

Until the completion of the Work and its final acceptance by Contractor, Subcontractor shall bear the risk of any loss or destruction of or damage to the Work or any materials, equipment or other items incorporated or to be incorporated therein arising from any cause other than a cause against which the Owner undertakes to carry insurance. At all times, Subcontractor shall protect all Work and materials including but not limited to stored materials, equipment and other items incorporated or to be incorporated into the Work from damage, deterioration, contamination, corrosion and exposure. All reasonable requests by Contractor to Subcontractor to enclose or otherwise protect such property shall be promptly completed by Subcontractor at no cost to Contractor.

5.3 Indemnification

Subcontractor hereby assumes exclusive responsibility for any and all personal injury, including death or property damage of whatever nature and however caused which results from or arises out of Subcontractor's performance of the Work. Subcontractor agrees to defend, indemnify, and hold harmless (a) the Contractor and the Contractor's officers, directors, agents, employees, subsidiary and affiliated companies, and (b) any other contractor or Customer that Contractor is required to defend and indemnify (the "Indemnitees") from and against all claims, demands, suits (regardless of legal theory), losses, including but not limited to economic, expenses and reasonable attorney's fees, and damages ("Claims") that: (a) are brought by a complaining party or entity who was employed by or had a contractual relationship with Subcontractor at the time of the alleged occurrence; or (b) that arise out of Subcontractor's performance of this Subcontract or the Work, including but not limited to the use (and loss of use) of any materials, tools, machinery, equipment, facilities or other personal or real property, regardless of owner and regardless of whether such Claim is caused, or alleged to have been caused, in part by the party seeking indemnity. A Claim shall be considered to "arise out of" the Subcontractor's performance of the Subcontract if the Claim, involves or relates to Work performed by the Subcontractor, regardless of whether the Claim expressly alleges any negligence, wrongdoing, breach of contract, error or improper performance by the Subcontractor. Subcontractor, however, is not required to indemnify Contractor or any person seeking indemnity for Claims based upon the sole alleged negligence of the person seeking indemnity.

In claims by any employee of Subcontractor or anyone employed by Subcontractor against any person indemnified pursuant to this paragraph, the obligation to indemnify pursuant to this paragraph shall not be limited in any way by any limitation on amount or type of damages, compensation, benefits payable by Subcontractor or anyone employed by Subcontractor under worker's compensation acts, disability benefit acts, or the other employee benefit acts.

5.4 Patent, Copyright and Royalty Fees

Subcontractor shall pay as part of the Fixed Subcontract Price for this Subcontract, all licenses, and fees for royalties, copyrights and patents for any and all equipment, software, materials, supplies or anything furnished by Subcontractor as part of the Work. Subcontractor shall defend and indemnify Contractor and its officers, agents and employees, against any claims, demands, and liability, including costs, attorney's fees and expenses, for infringement upon any Letters Patent of the United States, any violation of copyrights, or any violation of any royalty agreements arising out of the performance of this Subcontract, or out of the use, or disposal by or for the account of Contractor of supplies, materials, software, equipment, or services furnished by Subcontractor.

5.5 Liens

The Subcontractor shall defend, indemnify, hold harmless and protect Contractor's Customer, any higher tier contractor and the Contractor against all laborers', materialmen's and mechanics liens upon the buildings or premises on which the Work is located arising out of labor or material furnished by Subcontractor or any party acting for or under Subcontractor under this Subcontract. Subcontractor shall furnish Contractor, upon request, affidavits of status of accounts and releases of liens as may be deemed necessary by the Contractor. All amounts paid by Contractor under this Subcontract shall be deemed trust funds held by Subcontractor for the benefit of its subcontractors and suppliers.

Subcontractor and its Sub-subcontractors and suppliers shall provide Contractor with written notice of its intent to file a notice of lien against the real property of the owner or against funds held by the owner that are due the Contractor at least ten days before taking such action. The notice shall specify the amount claimed, exclusive of interest and attorney's fees. Upon receipt from Contractor of a bond from a good and sufficient surety assuring payment of amounts recovered by Subcontractor against Contractor under the Disputes paragraph of this Subcontract, not to exceed the amount stated in Subcontractor's notice, Subcontractor and its subcontractors and suppliers agree to dismiss with prejudice, withdraw or not file such lien claim. The cost of such surety bond shall be recoverable by Contractor under the Attorney's Fees paragraph of this Subcontract. Subcontractor further agrees to include this provision in each and every subcontract, purchase order or agreement for labor to be performed or material to be provided in connection with the Work and acknowledges that such requirement is a material provision of this Subcontract. If Subcontractor or its subcontractors or suppliers takes any action contrary to this paragraph, Contractor shall be entitled to recover liquidated damages of ten percent (10%) of the amount of the lien, which shall cover the cost of any bonds required from Contractor, interest on amounts withheld as a result of the lien, and attorney's fees incurred as a result of the defense against the lien. Subcontractor shall also be separately liable for any amounts covered by the lien that Contractor is required to pay.

6. DELAYS, SUSPENSIONS & TERMINATION

6.1 Excusable Delays

Subcontractor shall not be liable for delay in performance due to causes beyond its control and without its fault or negligence, provided: (1) Subcontractor exercises due diligence in promptly notifying



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Contractor of conditions which will result in delay; (2) such delay does not cause Contractor to become liable for any damages or penalty pursuant to the Contract Documents for the delay; and (3) the Contractor was advised in advance of Subcontractor's Schedule.

event of a termination for default, the condition of default is satisfied and the assignments become effective. The Subcontractor shall upon termination for default complete any and all written assignments or other documentation to enable Contractor to use the Subcontractor's subcontractors and supply contracts to complete the Work.

6.2 Contractor-Directed Suspensions or Delays

Contractor may direct in writing that the Subcontractor suspend, delay or interrupt all or any part of the Work for such period of time Contractor determines to be appropriate or necessary. If the performance of the Work is so suspended, delayed or interrupted for an unreasonable period of time, an adjustment shall be made for any increase in the cost of performance of this Subcontract (excluding profit) necessarily caused by the unreasonable suspension, delay or interruption. However, no adjustment shall be made for any suspension, delay or interruption to the extent that performance would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of the Subcontractor, or for which an adjustment is provided under paragraph 4.1, Changes, or that would be prohibited by paragraph 4.2, Extra Compensation.

The rights and remedies of the Contractor provided in this paragraph are in addition to any other rights and remedies provided by law or under this Subcontract. Subcontractor is not entitled to any further payment until the Work is completed and the total cost for the completion of the Work is known. Subcontractor is liable for all costs required to complete performance of the Work. In the event that the cost to complete the Work exceeds the amount due Subcontractor under this Subcontract, then Subcontractor shall pay to Contractor the difference.

Subcontractor shall have no right to recover any additional compensation for delays except to the extent that: (a) such request is consistent with paragraph 4.2, Extra Compensation; (b) Contractor was advised in advance of the Subcontractor's Schedule; and (c) the Subcontractor's Schedule was compiled and updated contemporaneously with the period of delay.

A written notice that does not specifically refer to this paragraph shall be treated as a termination for default. However, a termination for default of Subcontractor that is later determined to be wrongful shall be treated as a termination for convenience.

6.3 Termination for Default

Contractor shall have the right to terminate this Subcontract for default on any one or more of the following grounds:

6.4 Termination for Convenience

- a. Subcontractor refuses or fails to prosecute the Work with such diligence as will insure its completion of the Work by the Completion Date specified in this Subcontract, or any extension thereof.
- b. Subcontractor fails to correct Work that upon testing or observation fails to comply with the Contract Documents.
- c. Subcontractor refuses to defend or indemnify Contractor for a claim asserted against Contractor that is covered by the insurance or indemnity paragraphs of this Subcontract.
- d. Subcontractor otherwise materially defaults under this Subcontract.

This Subcontract may be terminated by the Contractor for any reason and (in whole or in part) at any time by written notice. In the event of a termination for convenience the Subcontractor will stop Work and follow the Contractor's instructions for winding down the Project. In such event the Subcontractor will be entitled to payment for all Work completed satisfactorily, as determined by the Contractor. Payment amount shall be on the basis of the Subcontractor's actual cost of performing such Work plus overhead and profit, as determined reasonable by the Contractor. The Subcontractor will not be entitled to payment for uncompleted Work or anticipated profit or unabsorbed overhead. In no event shall Subcontractor be entitled to receive more than the percentage of Work satisfactorily completed multiplied by the Subcontract Price. If Contractor has been terminated, the termination provisions of the Contract Documents will bind the Subcontractor.

In the event that Contractor determines that Subcontractor defaulted under this Subcontract, Contractor shall give the Subcontractor written notice of its default. Contractor shall give Subcontractor no less than 3 business days to cure the default specified by Contractor. In the event that Subcontractor fails to cure the default(s), or to commence a cure, within the time specified in the notice, then this Subcontract shall be terminated.

6.5 Termination for Failure to Maintain Minority Status:

Upon a termination or default, Contractor may take over the Work and prosecute the Work to completion, by contract or otherwise. Contractor may take possession of and utilize Subcontractor's, materials, equipment, appliances, software, computers and plant as may be on the site of the Work and necessary for completion of the Work. In advance of any termination for default, Subcontractor conditionally assigns to Contractor all rights, title and interest in any of Subcontractor's subcontracts and material supply contracts. In the

If minority ownership certification of the Subcontractor is a factor in the issuance of this Subcontract by Contractor, the Subcontractor is obligated to maintain such minority ownership certifications status throughout the term of the Subcontract. If at any time the Subcontractor is not accepted by the majority, by sales, of Contractor's United States-based customers as a minority-owned business, or certified as a minority-owned business by the National Minority Supplier Development Council ("NMSDC") or one of its local Councils, Contractor may terminate this Subcontract upon sixty (60) days prior written notice to the Subcontractor, unless Subcontractor obtains such certification in the sixty (60) day period. In the event Subcontractor's failure to be accepted or certified, as the case may be, results solely from a change in standards of MBE definition or certification by the NMSDC, Contractor may terminate this Subcontract upon prior written notice to the Subcontractor, provided that any such notice will allow Subcontractor a twenty (20) working day opportunity to cure the lack of certification. Subcontractor's failure to cure in the given time period shall result in termination of this Subcontract.



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6.6 Governing Law, Forum Selection, Disputes, Dispute Resolution Flow Down

Governing Law. This Subcontract, and any disputes arising from or related to this Subcontract or Subcontractor’s Work under this Subcontract, shall be governed and enforced by, and interpreted and construed in accordance with, the governing law provisions of the Prime Contract, without regard to any conflict of laws principles of the specified jurisdiction. To the extent there is no Prime Contract, or the Prime Contract fails to contain a governing law provision, any claims or disputes with respect to the Work or this Subcontract shall be governed by the laws of the state of Delaware, without regard to the conflict of laws principles thereof.

Forum Selection. Unless Contractor exercises its right to arbitration set forth in the “Disputes” section below, any dispute not settled by the parties through negotiation or mediation by the time of final completion of the Work shall be subject to the exclusive venue and jurisdiction of any state or federal court located in Milwaukee, Wisconsin unless prohibited by law or stipulated in the Contract Documents, in which case the dispute shall be subject alternatively and exclusively to the venue and jurisdiction of any state or federal court located in, or within 50 miles from, the location of the Project. Subcontractor hereby irrevocably waives any objection to jurisdiction or venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon the doctrine of forum non conveniens. Subcontractor also irrevocably waives personal service of process and consents to process being served in any suit, action or proceeding in connection with this Subcontract by mailing a copy thereof via registered or certified mail to Subcontractor at the address for Subcontractor set forth in this Subcontract.

Disputes. If any dispute arises between Subcontractor and Contractor in connection with this Subcontract, regardless of the underlying legal theory, the parties shall promptly (1) provide the other party with notice of the dispute, and (2) attempt in good faith to settle the same by negotiation at the local leadership level. If the parties are unable to resolve such dispute at the local leadership level despite such good faith efforts, the parties shall submit such dispute to the applicable members of their senior management with authority to resolve such dispute. At any time, and at Contractor’s election, the parties shall participate in mediation to assist in resolving the dispute. The costs of the mediation shall be borne equally by the parties.

All disputes not settled by negotiation or mediation shall be reserved until the final completion of the Work, at which time either party may initiate legal action pursuant to the provisions of this Section 6.6. In all cases, Subcontractor shall provide Contractor at least thirty (30) days advance written notice of its intent to initiate any legal action. Notwithstanding the foregoing, Contractor shall have the sole right to initiate binding arbitration in lieu of legal action. The arbitration shall be conducted in Milwaukee, Wisconsin or any other location reasonably specified by Contractor, unless otherwise prohibited by law or stipulated in the Contract Documents, and shall be administered by a reputable arbitration provider chosen by Contractor. In the event Subcontractor has already initiated legal action against Contractor, Contractor may, at its sole option, elect to have the dispute resolved through binding arbitration instead, provided Contractor submits notice of this election in writing to Subcontractor within sixty (60) days following Subcontractor’s service of process on Contractor.

If Contractor elects arbitration as set forth herein, Subcontractor irrevocably submits to the jurisdiction of the arbitrator and waives any objection to the arbitration, including any defense that Subcontractor is not subject personally to the jurisdiction of such arbitrator, that such arbitration is brought in an inconvenient forum or that such venue is improper. Except with respect to disputes where the total value exceeds \$2,000,000 as set forth below, the award rendered by the arbitrator or panel shall be final. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and judgment upon the award rendered by the arbitrator may be entered by any court of competent jurisdiction. The costs of the arbitration shall be borne equally by the parties.

Depending on the total value in dispute between the Parties, the arbitration shall be further conducted as follows:

Disputes Under \$500,000: Such disputes shall be resolved using a single arbitrator mutually selected by the parties or, if the parties are unable to agree, an arbitrator appointed in accordance with the rules of the arbitration provider that is a licensed attorney with at least fifteen (15) years of experience and primary practice in construction law. Such disputes shall be resolved on the papers only, without presentation of live testimony or any hearing on the merits, within three (3) months of the date the arbitrator is appointed in writing. No discovery shall be permitted. Each party, however, shall attach to its written submission any documents or materials relied on by that party in support of its position, such that the other party has a meaningful opportunity to review such materials and respond in writing to the arbitrator if it so chooses. The arbitrator shall issue a reasoned award stating in writing the findings of fact and conclusions of law that support the arbitrator’s decision.

Disputes Between \$500,000 and \$2,000,000: Such disputes shall be resolved using a single arbitrator mutually selected by the parties or, if the parties are unable to agree, an arbitrator appointed in accordance with the rules of the arbitration provider that is a retired federal judge or a licensed attorney with at least fifteen (15) years of experience and primary practice in construction law. Such disputes shall be resolved within nine (9) months of the date the arbitrator is appointed in writing. No discovery shall be permitted, other than the exchange of expert reports, if applicable. Each party, however, shall exchange any documents or materials relied on by that party in support of its position sufficiently in advance of any merits hearing, such that the other party has a meaningful opportunity to review such materials and respond accordingly before or during the hearing. The parties shall have the right to bring a dispositive motion in advance of any merits hearing if directed to discrete legal issues or defenses based on clear contractual provisions, provided the arbitrator places limits on briefing and implements an accelerated schedule that will not delay the issuance of a final award within the nine (9) month time period contemplated herein. Following submission of a dispositive motion and/or completion of the arbitration hearing, the arbitrator shall issue a reasoned award stating in writing the findings of fact and conclusions of law that support the arbitrator’s decision.

Disputes Over \$2,000,000: Unless the total value of the dispute exceeds \$10,000,000, such disputes shall be resolved using a single arbitrator mutually selected by the parties or, if the parties are unable to agree, an arbitrator appointed in accordance with the rules of the arbitration provider that is a retired federal judge or a licensed attorney with at least fifteen (15) years of experience and primary practice in



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construction law. For any dispute with a total value in excess of \$10,000,000, three arbitrators will be selected and appointed in accordance with the rules of the arbitration provider. Any dispute with a total value that exceeds \$2,000,000 shall be resolved within twelve (12) months of the date the arbitrator or arbitration panel is appointed in writing. Discovery will be permitted, but shall be limited as follows: Documentary discovery shall be limited to the exchange of project files, accounting records, or other relevant claim support and documents directly relevant to significant issues in the case or to the case's outcome and proportional to the needs of the case, taking into consideration whether the burden or expense of the proposed discovery outweighs its likely benefit. Depositions will be permitted, but shall be limited to party representatives and/or experts, and may not exceed five total depositions per side. For cases involving expert discovery, expert reports shall be exchanged in advance of any expert depositions. The parties shall have the right to bring a dispositive motion in advance of any merits hearing if directed to discrete legal issues or defenses based on clear contractual provisions, provided the arbitrator(s) places limits on briefing and implements an accelerated schedule that will not delay the issuance of a final award within the twelve (12) month time period contemplated herein. Following submission of a dispositive motion and/or completion of the arbitration hearing, the arbitrator(s) shall issue a reasoned award stating in writing the findings of fact and conclusions of law in support of the decision. Such award shall be final unless either party chooses to appeal the award, in which case the parties agree to utilize the applicable arbitration appeal procedure set forth in the rules of the chosen arbitration provider as it exists on the effective date of this Subcontract. Any award issued as a result of such appeal shall be final.

Contractor may, however, at any time so as to permit the Work to continue without interruption issue a written order, pursuant to the paragraph hereof entitled "Changes", regarding the matter in dispute. Such order shall neither prejudice the rights of either party regarding the matter in dispute, nor be construed as an admission by Contractor that Subcontractor is entitled to extra compensation or an extension of time on account thereof. Upon receipt of any such order, Subcontractor shall immediately proceed in accordance therewith, as provided in the Changes paragraph 4.1.

Dispute Resolution Flow Down. Subcontractor shall include, in all subcontracts, purchase orders or other agreements for labor or material to be provided in connection with the Work, a provision that requires all disputes arising under, resulting from, or related to such agreements and in which Contractor is or may be a party, to be resolved in accordance with the governing law, forum selection, and dispute resolution provisions of this Subcontract. Subcontractor further authorizes Contractor to demand arbitration on its behalf against any subcontractor or supplier who claims that amounts are due for labor or material provided in connection with the Work. Subcontractor acknowledges that this is a material provision of this Subcontract.

6.7 **Attorney's Fees**

If either party is required to commence proceedings including, without limitation, any binding arbitration to enforce any provisions of this Subcontract or to protect its interests in any manner arising under this Subcontract, the party prevailing in such proceedings shall be entitled to reimbursement for all reasonable costs and expenses, including

attorney's fees, incurred in such proceeding. A prevailing party is a party that recovers at least 75% of its total claims or that is required to pay no more than 25% of the claims made against it. This provision shall not apply to a mediation commenced by either party.

7. **OTHER**

7.1 **Emergency Conditions**

In the event the Subcontractor encounters conditions which immediately affect the safety of persons or property, the Subcontractor may take those reasonable and necessary measures to prevent injury to person or damage or destruction of property. In such event, Subcontractor may present a Request for Change Order in accordance with paragraph 4.1 provided that Subcontractor did not cause or contribute to the cause of the condition.

7.2 **Assignments and Subcontracting**

No assignments by Subcontractor of this Subcontract or of any monies due or to become due hereunder shall be binding upon Contractor until Contractor's written consent thereto is obtained. Subcontractor shall not further subcontract any portion of this Subcontract beyond what may be set forth in Attachment 4 without written approval from Contractor. Any assignment by Subcontractor to anyone of any right under this Subcontract without the written consent of Contractor shall be null and void and without effect.

7.3 **Clean-Up**

Subcontractor shall keep its work and storage areas cleared of debris at all times and upon completion of the Work and before final acceptance shall leave the premises in a broom-clean, neat and workmanlike condition. Contractor may clean up the premises and charge to Subcontractor's accounts all costs for said cleanup. Contractor also reserves the right to allocate to Subcontractor cleanup backcharges that have been imposed upon Contractor under the Contract Documents without first complying with this paragraph and based upon Subcontractor's presence in areas for which cleanup backcharges have been assessed against Contractor.

7.4 **Notice**

Notices permitted or required to be given under this Subcontract shall be in writing and shall be deemed duly given: (a) upon actual delivery if delivery is by hand or by nationally recognized courier service, or (b) after three (3) days following delivery into the United States Postal Service if such delivery is made by postage paid certified mail. Each such notice shall be sent to the respective party at the address indicated below or to any other address or person that the respective party has subsequently so designated in the Contract Documents within such time and in such manner to permit Contractor to provide written notices in accordance with the Contract Documents.

If the Contract Documents are silent as to the address to submit notice to Contractor, the following address shall be used:

Johnson Controls
Contract Labor Administrative & Shared Services Team
90 Goodway Drive, Rochester, NY 14623

7.5 Independent Contractor

Nothing in this Subcontract shall be construed as reserving or granting to Contractor any right to exercise any control over or to direct in any respect the conduct or management of this business or operations of Subcontractor. The entire control and direction of such business and operations shall be and shall remain in Subcontractor. Neither Subcontractor nor any person performing any duties or engaged in any work on behalf of Subcontractor shall be deemed an employee or agent of Contractor.

Subcontractor expressly understands and agrees that neither Subcontractor, nor its sub-subcontractors, employees or agents are nor will with the passage of time become eligible for or entitled to participate in any plans or arrangements that Contractor or any of its affiliates maintain for the benefit of Contractor's employees, including, without limitation, pension, profit sharing, health, welfare benefit or other fringe benefit plans.

7.6 Safety. At all times, Subcontractor shall comply with the Contractor's Subcontractor Safety Specification attached and incorporated herein as Attachment 11. Additionally, all Subcontractor work must be performed in accordance with the most recent laws, rules and regulations of any governmental body that has jurisdiction over the project. To the extent the subcontractor seeks to vary, change or otherwise alter any safety practice, application or procedure, the subcontractor will submit a job hazard analysis to JCI for approval. If Subcontractor fails to seek approval and varies, changes or otherwise alters any safety practice, application or procedure, then Subcontractor assumes complete and exclusive responsibility for such change.

7.7 Equal Employment Opportunity. The provisions of Executive Order 11246 and the Equal Employment Opportunity clause, section 60-4.3(a) of 41 CFR, concerning equal opportunity obligations of federal contractors and subcontractors; Executive Order 11701 and the Affirmative Action clause, section 60-250.4 of 41 CFR, concerning affirmative action obligations of federal contractors and subcontractors; and Executive Order 11758 and the Affirmative Action clause, section 60-741.4 of 41 CFR, concerning affirmative action obligations for handicapped workers of federal contractors and subcontractors are all incorporated by reference and made a part of this Subcontract.

7.8 Warranty of Authority

Each party executing this Subcontract warrants and represents that it has full power and authority to enter into this Subcontract and to bind itself to performance hereunder. Each party warrants and represents that the individual signing this Subcontract is an officer or a principal of the party on behalf of whom it signs, or has been granted or delegated all requisite power and authority to bind the party on behalf of which he signs. This Subcontract is not binding upon Contractor unless executed by authorized representatives of Contractor.

This representation and warranty of authority shall apply with equal force to each and every document executed by either party subsequent to this Subcontract, in connection with the Work to be performed under this Subcontract.

7.9 Ethics and Compliance. Contractor has established an ethics policy as described and accessible on the Contractor's website at <http://www.johnsoncontrols.com/ethics> and expects Subcontractor and each of its employees, subcontractors, and material suppliers to abide by this policy or an equivalent ethics policy of their own. Subcontractor acknowledges that it has reviewed its supply chain security procedures and certifies that in the countries in which Subcontractor is doing business, Subcontractor does and shall (a) comply with laws prohibiting slavery and human trafficking, and (b) not use labor from persons of less than minimum working age. Subcontractor acknowledges that it and its personnel have a responsibility to bring any concerns related to these policies to Contractor through its confidential Internet-reporting service at www.JohnsonControlsIntegrityHelpline.com or by using Contractor's confidential, toll-free Integrity Helpline at 1-800-250-7830 (see the complete list of toll-free numbers for those outside of the United States at www.JohnsonControlsIntegrityHelpline.com).

7.10 Conflicts of Interest. Contractor does not permit the offering or acceptance of gifts or gratuities by Contractor employees from parties with whom Contractor is contracting for services, products or other matters and Subcontractor shall not make any offer to any Contractor employee that would violate this policy. Subcontractor further represents and warrants that there is no financial or business relationship or any other conflict of interest that Subcontractor has with or has offered to any employee of Contractor. Subcontractor will notify Contractor promptly if (a) Subcontractor has reason to believe that a breach of this Section has occurred or is likely to occur; or (b) if any conflicts of interest arise after execution of this Subcontract. If Contractor at any time believes, in good faith, that a breach of any of the representations and warranties in this Section has occurred or may occur, Contractor may withhold any compensation, reimbursement, or other payment until such time as Contractor has received confirmation to its reasonable satisfaction that no breach has occurred or will occur. Contractor shall also be entitled to reclaim all payments previously made to Subcontractor. Contractor shall not be liable to Subcontractor for any claim, losses, or damages whatsoever related to Contractor's decision to reclaim or withhold any compensation, reimbursement, or other payment under this provision.

7.11 No Publicity. Except as required by law, Subcontractor may not issue or release any press release, advertisement, promotional material, announcement or other statement regarding the relationship of the parties or the terms of this Subcontract without the prior written consent of Contractor.

7.12 Entire Agreement. These Terms and Conditions, together with the Subcontract, sets forth the entire agreement between the parties relating to the Work and supersedes all prior or contemporaneous agreements of the parties with respect to the subject matter contained therein. Contractor shall not be bound by, and Contractor specifically objects to, any term, condition, or other provision inconsistent with or in addition to any provision of this Subcontract that is submitted by Subcontractor in any correspondence or any other document, unless Contractor specifically agrees to such provision in a written instrument signed by an authorized representative of Contractor. No shrink-wrap, click-wrap, browse-wrap or other terms and conditions or agreements provided with any products or software hereunder will be binding on JCI, even if use of such products or software requires an affirmative "acceptance" of those additional terms before access is permitted. All



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such additional terms will be of no force or effect and will be deemed rejected by Contractor in their entirety.

7.13 **No Third Party Beneficiaries.** No person other than the parties to this Subcontract shall have any rights in this Subcontract. The rights of this Subcontract are exclusively those of the parties to this Subcontract. There shall be no third party beneficiaries of this Subcontract. In signing this Subcontract, Subcontractor represents that it is aware of any party claiming such rights.

7.14 **Survival.** Each provision of this Subcontract that would by its very nature or terms survive any termination or expiration of this Subcontract, including but not limited to insurance, indemnity, non-disclosure, and non-solicitation provisions, shall survive any termination or expiration of this Subcontract, regardless of the cause thereof.

7.15 **Severability.** If any paragraph of this Subcontract is held void or unenforceable or is otherwise stricken, then any and all remaining paragraphs of this Subcontract shall remain valid and binding upon the parties.

7.16 **No Waiver of Enforcement.** The failure of Contractor to insist upon strict adherence to any term of this Subcontract on any occasion shall not be considered a waiver of Contractor's rights or deprive Contractor of the right thereafter to insist upon strict adherence to that term or any other term of this Subcontract.

7.17 **Hazardous Materials**

Subcontractor shall not be required to perform any identification, abatement, cleanup, control or removal of asbestos or other hazardous materials not included in Attachment 1, the Subcontractor's Scope of Work. However, should Subcontractor become aware of or suspect the presence of asbestos or other hazardous materials, Subcontractor shall stop work in the affected area immediately and notify Contractor. Should Subcontractor fail to stop work, the Subcontractor shall be responsible for taking all necessary and reasonable steps to contain, control, and abate the asbestos or other hazardous materials in accordance with all-applicable statutes and regulations. Subcontractor agrees to assume full responsibility for any claims arising out of or relating to the disturbance of asbestos or hazardous materials at the site of the Work resulting from the action or inaction of Subcontractor. If Subcontractor disturbs or otherwise fails to stop work as specified herein, then Subcontractor shall defend and indemnify Contractor against any and all claims which arise out of Subcontractor's action or inaction.

In the event that the Scope of Work incorporated herein as Attachment 1 requires Subcontractor to remove any hazardous materials as defined in 29 C.F.R. Section 1910.1200 et seq. from the Project site, Subcontractor shall: (1) deliver a Material Safety Data Sheet, "MSDS", as defined and prescribed in 29 C.F.R. Section 1910.1200, to Contractor at least two (10) days before transport of any hazardous substance; (2) furnish Subcontractor's procedures for disposal of hazardous substances, product residue, by-products, and wastes to Contractor at the time the MSDS are delivered to Contractor; (3) remove, handle and transport any and all hazardous substances in accordance with all applicable Local, State and Federal ordinances, statutes and requirements.

In the event that the Scope of Work incorporated herein as Attachment 1 requires Subcontractor to remove any hazardous materials, and Subcontractor fails to remove, handle and transport any hazardous substances as provided herein, then Subcontractor agrees to defend, indemnify and hold Contractor harmless from and against all claims, losses, liabilities, damage and expenses including reasonable attorney fees and related expenses ("Loss and Expense") arising out of bodily injury (including death), property damages or penalties assessed or asserted, when such injury (including death), property damage or penalties occur or are assessed as a result Subcontractor's failure to remove, handle and transport any and all hazardous substances in accordance with this Agreement, or are incident to subcontractor's failure to perform its duties as set forth in this Agreement.

7.18 **Field Coordination.** Installations shown and implied on the Contract Documents are diagrammatic only. Unless specific dimensional information is expressly noted, the Contract Documents are not intended to indicate exact locations of installations; to identify all required off-sets, fittings, mountings, etc.; or to identify the required coordination between all trades and building elements. It is the Subcontractor's responsibility to coordinate with the other trades and building elements in the performance of the Work. Any changes to the location of the Work to be installed or any installation requirements necessitating Subcontractor to coordinate with other trades and building elements shall be accomplished by the Subcontractor WITHOUT ADDITIONAL COST TO THE PROJECT. It shall be the Contractor's sole discretion to determine whether a change in an installation due to a trade or building interference will constitute a material change in the Work and warrant a Change Order.

7.19 **As-Built Documentation.** At Contractor's request, during construction of the Work, Subcontractor will annotate a set of the permitted construction drawings that accurately and realistically depict the as-built condition of the Work ("Drawings"), such Drawings will include: (a) nothing the actual physical conditions encountered at the Project site and/or building during construction; and (b) depicting changes to the Work made in the field and based on Change Orders (the "As Built Drawings"). Subcontractor shall submit a complete set of As-Built Drawings as a condition precedent to receiving final payment.

Upon Completion of the Work, and before application for final payment, the Subcontractor shall turn over the required As-Built drawings along with all other required final documentation.

7.20 **Utilization of Minority-Owned Business Enterprises.** The Subcontractor agrees to use its best efforts to provide MBEs the maximum practicable opportunity to participate in the subcontracts and orders it may award in connection with this Subcontract. The target goal for utilization of MBEs under this Subcontract is set at twenty percent (20%); the material failure, if any, to meet this target goal shall not, however, constitute a default by the Subcontractor of its obligations under this Subcontract. The Subcontractor will require a minority-owned certification by one of the affiliated local Councils of the NMSDC from any firm claiming to be an MBE. The Subcontractor will report on a quarterly basis the MBE participation in this Subcontract, including without limitation an identification of each MBE utilized, the goods and/or services procured from each MBE and the total amount paid to each MBE in connection therewith.

7.21 **Non-solicitation of Contractor's Customer.** Subcontractor expressly acknowledges that Contractor's relationships with its customers and the goodwill associated with such relationships constitute the property of Contractor. With regard to the Work performed hereunder, Subcontractor shall not (a) utilize information received from Contractor pursuant to this Subcontract to directly compete with or gain a competitive advantage over Contractor; or (b) take any action intended to, or having the foreseeable effect of, adversely affecting Contractor's relationship with Contractor's customer. The terms of this Section shall apply, notwithstanding that any relationship between Subcontractor and the customer prior to the effective date of this Subcontract.

7.22 **Contractor's Employees.** Subcontractor understands and agrees that the specialized training, experience knowledge and skills of Contractor's employees working on or involved in the Work, and the confidential information, trade secrets, and/or other proprietary information related to the Work and/or Contractor's customer held by those employees by virtue of Contractor's role in the Work described in this Subcontract, are critical, valuable and proprietary components of Contractor's business and its relationship with its customer. Subcontractor further acknowledges that by virtue of its Work under this Subcontract, it will have unique access to such Contractor employees, including the specialized training, experience, knowledge, skills, and/or confidential and proprietary information those employees possess. Except to the extent prohibited by law, Subcontractor shall not, without the advance written consent of Contractor, directly or indirectly, recruit, hire, solicit, or otherwise induce to terminate the employment of any Contractor employee, or other person who has had a material business relationship with Contractor, that has at any time worked on or in connection with the project during the term of this Subcontract and for a period of one (1) year after termination or completion of the Work, whichever occurs later. In the event of Subcontractor's breach of this provision, Contractor may proceed against Subcontractor by way of injunction or otherwise to restrain or prevent the continuance of such breach. Moreover, in respect of each such breach (each occurrence or repetition thereof constituting a separate breach event), Subcontractor shall pay on demand to Contractor an amount equal to the solicited employee's prior year's compensation as a genuine pre-estimate of damages and not as a penalty, the whole without prejudice to Contractor's right to claim, institute legal proceedings for and collect such greater amount of damages as may be sustained by Contractor. It is understood and agreed between the parties that this provision is reasonable and necessary for the protection of Contractor's business and this is an essential to the formation of this Subcontract.

7.23 **Data Privacy and Security.** If Subcontractor receives Contractor Customer confidential information and/or personal information about Customer or its personnel, Subcontractor will maintain and enforce safety and physical security procedures with respect to its access and

maintenance of such data and information as set forth in this Subcontract and as required by law.

7.24 **Confidentiality; Non-Disclosure.** Subcontractor shall not disclose to any person or any entity any information obtained by Subcontractor or such information that is developed by Subcontractor prior to, during, or following the performance of the Work which relates in any way to (a) Contractor; (b) Contractor's business; (c) any of Contractor's affiliates or their respective businesses; or (d) Contractor's customer. Subcontractor expressly understands and agrees that all technical information including designs, blueprints, drawings, specifications, engineering data, technical manuals or proprietary product know-how and any other information or documentation connected with the Work are of a confidential nature and are not to be reproduced or disclosed to anyone except to the extent required to perform the Work, and will be returned to Contractor upon the earlier of the completion of the Work or termination of this Subcontract. The parties agree that an impending or existing violation of this provision may cause irreparable harm to Contractor, its affiliates and/or Contractor's customer for which there may be no adequate remedy at law. Accordingly, Subcontractor agrees that in addition to the foregoing indemnity and other rights and remedies that may be available to Contractor, its affiliates, and/or Contractor's customer, any one or all of them shall be entitled to seek immediate injunctive relief prohibiting such violation.

7.25 **Electronic Media.** These Terms and Conditions, along with the Subcontract and related Contract Documents may be accepted in electronic form (e.g., by an electronic or digital signature or other means of demonstrating assent) and Subcontractor's acceptance will be deemed binding between the parties. Subcontractor acknowledges and agrees it will not contest the validity or enforceability of this Subcontract and related documents, including under any applicable statute of frauds, because they were accepted and/or signed in electronic form. Each party agrees that it will not contest the validity or enforceability of a signed facsimile, electronic, or other copy of the Subcontract or related Contract Documents on the basis that either lack an original handwritten signature. Computer maintained records of a party when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records. Either party may scan, fax, email, image, or otherwise convert this Subcontract and any other Contract Documents into an electronic format of any type. Any unaltered copy of this Subcontract produced from such an electronic format will be legally binding upon the parties and equivalent to the original for all purposes, including litigation. Subcontractor accepts this Subcontract and forms a contract by: (a) commencing any work under the Order; (b) accepting the Order in writing; (c) failing to provide written rejection of the Order within 48 hours of receipt; or (d) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order.

SIGNATURE PAGE FOLLOWS



SUBCONTRACT TERMS AND CONDITIONS (US)

IN WITNESS WHEREOF the parties have caused this Subcontract to be executed as of the date and year first written above.

Johnson Controls, Inc.

Subcontractor

By:

By:

(Signature of Authorized Representative)

(Signature of Authorized Representatives)

JCI Representative's Name

Subcontractor Representative's Name

(Typed Name)

(Typed Name)

JCI Representative's Role

Subcontractor Representative's Role

(Title)

(Title)