

**ALL TRANSACTIONS BY AND BETWEEN TRIMARK USA LLC, OR ANY OF ITS AFFILIATES, SUBSIDIARIES, SUCCESSORS OR ASSIGNS, AND ITS SUPPLIERS, SUBCONTRACTORS OR VENDORS WHO ARE PROVIDING SERVICES TO TRIMARK AND/OR ON BEHALF OF TRIMARK IN CONNECTION WITH A PROJECT, ARE GOVERNED BY THESE SUBCONTRACTOR GENERAL TERMS AND CONDITIONS (THE “SUBCONTRACT AGREEMENT”). ANY PROPOSAL OR DOCUMENT FROM A SUPPLIER, SUBCONTRACTOR OR VENDOR THAT INCLUDES COMPETING TERMS ARE OBJECTED TO AND SHALL BE OF NO FORCE OR EFFECT.**

### **1. Definitions**

**Change Order** shall mean a written instrument prepared by TriMark and signed by the Subcontractor stating their agreement regarding a change in the Work; a Change Order may be in the form of a Purchase Order.

**Subcontractor** means any supplier, subcontractor or vendor engaged by TriMark to provide services or products to another party.

**Prime Contractor** is the party with whom TriMark has an agreement to perform work as a subcontractor in accordance with a written agreement (“**Lead Contract**”). This party may be a General Contractor, Construction Manager, or another Subcontractor. When TriMark contracts directly with an Owner, the Owner shall assume the rights and duties of the Prime Contractor.

**Owner** is the party with whom the Prime Contractor executes a written construction agreement (the “**Prime Contract**”).

**Purchase Order** shall mean a quote, purchase order, or transmission from TriMark requesting and/or detailing the scope of the Subcontractor’s work (“**Work**”) to be performed by the Subcontractor and the amount to be paid by TriMark to Subcontractor for the satisfactory completion of the Work.

**Project** shall mean the overall work to be performed as defined by the Contract Documents, including but not limited to the Work.

**TriMark** shall refer to TriMark USA, LLC or the subsidiary or affiliate (interchangeably, “**TriMark**”) that issued the Purchase Order and is entering into this Subcontract Agreement. Any purchase or transaction between Subcontractor and any affiliate of TriMark pursuant to this Agreement shall be deemed a two-party agreement between such entities, and Subcontractor shall look solely to that affiliate for any claims, demands, and fulfillment of obligations hereunder.

### **2. Acceptance**

Any Purchase Order shall be subject to, and shall be conditioned upon, Subcontractor’s assent to this Subcontract Agreement, which shall be presumed from Subcontractor’s acknowledgment of a Purchase Order, and/or initiation of the Work, and/or acceptance of payment. Any terms or conditions or .html links on any quote, invoice, order form or other documents provided by Subcontractor shall be null and void. Subcontractor agrees that no other writing shall be required to make this Subcontract Agreement legally binding, and Subcontractor agrees not to contest the validity or enforceability of this Subcontract under the provisions of a statute of frauds or any other applicable law.

### **3. Subcontract Documents**

The contract documents include this Subcontract Agreement, the Lead Contract, Prime Contract, and the documents issued for purposes of bidding the Work (collectively, the “**Contract Documents**”). These documents include the plans and specifications contract addenda, authorized changes, additions and modifications, drawings, details, together with all general, technical, supplementary and special terms and conditions, and all other documents listed in or referred to within the Contract Documents. In the event of a conflict between the Subcontract Agreement and the other Contract Documents, the terms imposing the greater duty on the Subcontractor shall govern. Subcontractor hereby acknowledges and agrees that it shall be bound to the terms and conditions of the Contract Documents, including, as applicable, any local, state, and/or federal government acquisition rules and regulations, and hereby assumes toward TriMark all of the duties, obligations and responsibilities that TriMark has assumed by the Contract Documents. The Contract Documents are available for examination by Subcontractor upon reasonable request. By initiating performance of the Work as defined hereunder, Subcontractor is certifying that it has carefully reviewed the Contract Documents and TriMark shall not be responsible for any inconsistencies or deficiencies within the Contract Documents which may cause Subcontractor to incur additional costs greater than the amount specified on the Purchase Order.

### **4. Contract Payment**

Subcontractor must include all applicable fees, taxes and costs on the Purchase Order in order to qualify for payment, subject to additions or deductions as provided in Article 5. Progress payments, less the retention specified in the Contract Documents, shall be made to Subcontractor for Work satisfactorily performed no later than seven (7) days after receipt by TriMark of payment from Owner or Prime Contractor for Subcontractor’s Work. The acceptance by the Subcontractor of each progress payment from TriMark shall constitute a waiver and release of all claims against TriMark for the Work performed that is covered by such progress payment (exclusive of claims to retention), including but not limited to any claims for additional compensation of any type that have arisen prior to the date of the Subcontractor’s estimate for payment, including delay, disruption, interference, or acceleration, and for every alleged act or omission of TriMark, arising out of or related to the Subcontract prior to the date of the estimate for payment. Final payment of the balance due shall be made to Subcontractor no later than seven (7) days after receipt by TriMark of final payment from Owner or Prime Contractor for Subcontractor’s Work. These payments are subject to receipt of such lien waivers, affidavits, warranties and guarantees required by the Contract Documents or TriMark.

### **5. Subcontract Change Orders**

The Subcontractor agrees to proceed with the Work, as modified by a construction change directive or proposal of cost upon receipt so as not to delay the progress of the Work. The construction change directive or proposal of cost is a written instrument



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that may be issued by TriMark, the Prime Contractor or the Owner. Subcontractor acknowledges and accepts that the construction change directive may defer calculation of fees until a Change Order can be executed and agrees not to delay its performance until such Change Order can be executed. TriMark will not make changes in the Work, whether additions, deletions or other revisions in any manner except upon written agreement, such as a Change Order, amendment or other mutually-agreed upon format.

**6. Scope of Work**

Subcontractor agrees to commence the Work described in the Purchase Order upon notification by TriMark, and to perform and complete such Work in accordance with Contract Documents and under the general direction of TriMark and in accordance with TriMark's schedule. The Work shall include all work, tools and materials necessary or incidental to complete the Work for the Project in strict accordance with and reasonably inferable from the Contract Documents and Purchase Order. Subcontractor shall be responsible for the cleaning and removal of debris generated by its Work.

**7. Governing Law and Jurisdiction**

This agreement should be governed by and enforced in accordance with the law of the state in which the Project is located. Any dispute or litigation arising under this Agreement shall be brought in the state in which the Work is to be performed as specified in the Contract Documents.

**8. Schedule of Work**

Time is of the essence for performance of Subcontractor's Work; Subcontractor will coordinate its work with all other contractors, subcontractors, vendors and suppliers involved with the Project to avoid delay or damage. Subcontractor shall provide TriMark with any requested scheduling information for the Work. TriMark will prepare or provide a schedule which will set forth the required durations for each portion of the Work (the "**Schedule of Work**"), which may be revised throughout completion of the Project. Subcontractor recognizes that changes may be made in the Schedule of Work and agrees to comply with such changes without additional compensation.

**9. Delay**

Subcontractor is responsible for any delays it causes in completing the Project due to failure to comply with the Schedule of Work. Subcontractor will pay TriMark for all costs, losses and damages, including liquidated damages, suffered by TriMark to the extent caused by the Subcontractor and/or those for whom Subcontractor is responsible. TriMark shall not be liable to Subcontractor for delay to Subcontractor's Work caused by the act, omission, negligence or default of the Owner, Prime Contractor, other subcontractors, or by reason of fire or other casualty, or on account of any acts of God or any other cause beyond the direct control of TriMark, or on account of any circumstance caused or contributed to by the Subcontractor. The Subcontractor's sole remedy for delay caused by TriMark may be an extension of time for completion equal to the delay caused by TriMark, if and when written notice and claim for delay are made and approved in accordance with the requirements of the Contract Documents. The Subcontractor expressly waives any claims for additional compensation arising directly or indirectly from delays caused by TriMark.

**10. Materials or Equipment Furnished by Others**

In the event the Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to exercise proper care in receiving, handling, storing and installing such items. The Subcontractor shall examine the items provided and report to TriMark in writing any items it may discover that do not conform to requirements of the Contract Documents or Purchase Order. The Subcontractor shall not proceed to install non-conforming items without further instructions from TriMark. Loss or damage due to acts or omissions of the Subcontractor shall be deducted from any amounts due to the Subcontractor or, if in excess, billed to Subcontractor.

**11. Correction of Subcontract Work**

If the Work is not in conformance with the Subcontract Documents or fails to be approved by TriMark, the Prime Contractor or the Owner, the Subcontractor shall promptly correct the affected portion of the Work, whether it had been fabricated, installed or completed. The Subcontractor shall be responsible for the costs of correcting such Work, as well as any additional testing, inspections, compensation or other costs incurred to remedy the non-conforming work.

Should Subcontractor fail to remedy any contractual deficiencies or non-conforming work within five (5) working days from receipt of written notice, or such shorter time period as required by the Contract Documents, then such failures shall constitute a default hereunder by Subcontractor. In the event of default, TriMark, without prejudice to any right or remedies, shall have the right to take whatever steps it deems necessary to correct said deficiencies, including but not limited to completing the Subcontractor's Work with its own forces and/or terminating this Subcontract, and charge the cost of replacement or remediation thereof to Subcontractor, who shall be liable for payment of same, including reasonable overhead and attorneys' fees.

**12. Indemnification**

To the fullest extent permitted by law, Subcontractor agrees to defend, indemnify and hold harmless TriMark, Prime Contractor, and Owner, as well as any other parties which TriMark is required under the Contract Documents to defend, indemnify and hold harmless, and their respective officers, directors, stockholders, equity holders, agents, servants and employees, from and against any claim, cost, expense, or liability (including reasonable attorneys' fees and expert witness fees) caused by, arising out of, resulting from, or occurring in connection with the performance of the Work by Subcontractor, its subcontractors and suppliers, or their agents, servants, or employees, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder. Subcontractor's obligation hereunder shall not be limited by the provisions of any workers' compensation

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or similar act. Additionally, Subcontractor agrees to defend, indemnify and hold harmless TriMark and its affiliates, agents, servants and employees, from and against any claim, cost, expense, or liability (including reasonable attorneys' fees and expert witness fees) brought by Owner, Prime Contractor or another subcontractor caused by, arising out of, resulting from, or occurring in connection with the performance of the Work by Subcontractor, its subcontractors and suppliers, or their agents, servants, or employees, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder. Subcontractor's obligation hereunder shall not be limited by the provisions of any workers' compensation or similar act. These obligations shall not be interpreted to reduce or negate any other rights or obligations of indemnity otherwise existing with regard as to any party or person described in this Article.

**13. Safety**

The Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. The Subcontractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect 1) employees and other persons at the site; 2) materials and equipment stored at the site or at off-site locations for use in performance of the Subcontract Work; and 3) all property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work. The Subcontractor shall be responsible for its own safety program and shall perform its Work in accordance with the Contract Documents and Purchase Order, the safety laws of the state in which the Project is located and Federal agencies having jurisdiction, including, but not limited to OSHA. TriMark and the Subcontractor shall give all notices required by law and the Contract Documents and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.

**14. Submittals & Notices**

The Subcontractor shall promptly submit for approval to TriMark all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Contract Documents and Purchase Order. The Subcontractor shall prepare and deliver its submittals to TriMark in a manner consistent with the Schedule of Work and in such time and sequence so as not to delay TriMark or others in the performance of the Work. When its submittals are delivered to TriMark, the Subcontractor shall advise TriMark in writing of any deviations in the submittals from the requirements of the Contract Documents and shall note such deviations in its submittals. In the absence of any such notifications, the Subcontractor shall warrant that its submittals are in conformance with the Contract Documents. The Subcontractor shall be responsible to TriMark for the adequacy, accuracy, completeness and conformity of its submittals to the Contract Documents. Notices of delay, unforeseen conditions, changes to the scope of work, and any other notices from the Subcontractor shall be provided in writing to TriMark in a timely manner so as to allow TriMark no less than three (3) business days to file such notice(s) with the Prime Contractor or Owner.

**15. Insurance**

Subcontractor shall maintain, at its own expense, the insurance types and coverages as required by the Contract Documents with a reputable and financially responsible carrier(s) or at a minimum Worker's Compensation and Occupational Disease Insurance in accordance with applicable law and Employer's Liability Insurance with coverage of not less than One Million (\$1,000,000) Dollars, and all other insurance required by applicable law. Subcontractor shall furnish insurance certificates as directed by TriMark, satisfactory in form and substance to TriMark, showing the required coverages, and providing for at least thirty (30) days' prior written notice to TriMark by the insurance company of cancellation or material modification. Subcontractor waives all subrogation rights against TriMark, its subcontractors and sub-subcontractors, the Prime Contractor and Owner for any loss or damage to the extent covered by insurance, except for any rights Subcontractor may have to the proceeds of such insurance.

**16. Non-Assignability**

Subcontractor shall not assign nor subcontract any Work to be performed without the prior written consent of TriMark; provided, however, this provision shall not restrict Subcontractor in the procurement of component parts or materials.

**17. Warranties**

In addition to any warranties required by the Contract Documents, Subcontractor warrants that all materials and equipment furnished under this Subcontract Agreement shall be new, unless otherwise specified, of good quality, in conformance with the Contract Documents and Purchase Order, and free from defective workmanship and materials. Warranties shall commence on the date of installation or delivery and shall be assigned to the Prime Contractor or Owner.

**18. Termination**

If Owner or Prime Contractor terminates the Prime or Lead Contract or stops the Work for a reason other than the sole default of TriMark through no fault of the Subcontractor, TriMark may terminate this Subcontract or stop the Work for the same reason. Should this Subcontract be terminated for default, Subcontractor shall assign all purchase orders and subcontracts to TriMark, if TriMark, in its sole and absolute discretion, requests such assignments.

Further, in its sole discretion and without notice to any guarantors, surety, or sureties, and without breaching this Subcontract, TriMark may terminate this Subcontract for its convenience upon the giving of written notice to Subcontractor.

In the event of termination for any reason, Subcontractor shall be entitled only to payment for the actual cost of the Subcontract Work completed in conformity with this Subcontract Agreement; Subcontractor shall not be entitled to any claim or claim of lien against TriMark, Owner or Lead Contractor.

**19. Compliance**

Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules, licensing regulations and lawful orders of public authorities bearing on its performance of the Work or specified in the Contract Documents. Subcontractor



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shall, at its own expense, obtain all necessary licenses and permits pertaining to the Work, including state or local contractor or subcontractor licenses, and shall comply with all statutes, ordinances, rules, regulations and orders of any governmental or quasi-governmental authority having jurisdiction over the Work or the performance thereof, or of the Project, or of Subcontractor, including, but not limited to, those relating to state or local contractor’s or subcontractor’s licenses, employment and wages, equal opportunity and discrimination, immigration, the environment, safety, and health.

Further, Subcontractor warrants that it is not sanctioned, suspended, debarred, or otherwise excluded from participating in U.S. federal, state, or local government contracting activities. Subcontractor shall notify TriMark if Subcontractor or any of Subcontractor’s employees or third parties who are performing Subcontract Work to TriMark become ineligible, specially designated, blocked, sanctioned, suspended, debarred, or otherwise excluded from participating in U.S. federal, state, or local government contracting activities. Subcontractor will maintain compliance with the TriMark Supplier Code of Conduct (available at <https://www.trimarkusa.com/SiteMedia/SiteResources/TriMark-Supplier-Code-of-Conduct.pdf>)

**20. Dispute Resolution**

Unless required otherwise in the Contract Documents, any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its rules pertinent to construction disputes and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator. The arbitrator shall be selected in accordance with the AAA rules pertinent to construction disputes. The place of arbitration shall be Boston, Massachusetts. This Agreement and the arbitration shall be governed by the laws of the state in which the Project is located. The arbitrator shall have the right to award attorney fees and costs to the prevailing party. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all parties. The parties agree to arbitrate solely on an individual basis, and this agreement does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. Without the consent of all parties, the arbitral tribunal may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding. At any time during the resolution of a dispute between the parties, either party has the right to apply to any court of competent jurisdiction for interim relief, including pre-arbitration attachments or injunctions, necessary to preserve the parties' rights or to maintain the parties' relative positions until such time as the arbitration award is rendered or the dispute is otherwise resolved.

**21. Miscellaneous**

This Subcontract Agreement shall be binding on, and benefit, the parties hereto and their respective successors and assigns. This Subcontract Agreement supersedes any and all prior or oral written agreements with respect to the subject matter hereof. No provision of this Subcontract Agreement shall be waived by any act or omission of any party unless expressly waived in writing. Failure of TriMark to insist upon strict performance of any term or condition of this Subcontract Agreement or the Contract Documents, shall not be construed to be a waiver of such performance or option, or of any other covenants or agreements on subsequent occasions, but the same shall be and remain in full force and effect. In the event any provision of this Subcontract Agreement, or any other document contemplated in this Agreement, shall be invalid, illegal or unenforceable, such provisions shall be severable from the rest of this Subcontract Agreement and the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby. All notices required to be given under this Subcontract Agreement shall be in writing and delivered personally or be sent to the other party by registered mail at the address at such place or places as either party may from time to time designate in writing.