

**TPC SYSTEMS
TERMS AND CONDITIONS**

**ARTICLE 1
EEO**

- 1.1 As a condition of accepting this contract (this "Contract"), Subcontractor (sometimes "you" or "your") agrees not to discriminate against any individual with respect to hire, discharge, compensation, terms, conditions or privileges of employment, or segregation of facilities because of such individual's race, color, religion, sex, age, handicap or national origin.

**ARTICLE 2
DEFINITIONS**

- 2.1 "TPC" refers to TPC Associates, Inc., a Connecticut Corporation, doing business as TPC Systems.
2.2 When this Contract form is used in connection with Construction Management, and TPC Systems ("TPC") is the Construction Manager, Subcontractor will be read to mean Trade Contractor. Notice shall be given to the person for who intended at his last known business address. As between TPC and Subcontractor, obligations imposed upon Subcontractor shall be imposed upon Subcontractor's suppliers and subcontractors, and all actions or omissions to act of said suppliers or subcontractors, their employees or agents shall be deemed to be those of Subcontractor, and Subcontractor shall remain responsible for its suppliers and/or subcontractors.

**ARTICLE 3
CONTRACT DOCUMENTS**

- 3.1 This contract includes the general conditions, specifications and drawings, all addenda thereto (hereinafter collectively referred to as the "Contract Documents"), or related documents covering the work to be performed under the contract between Owner/Contractor ("Owner/Contractor") and TPC, as if herein set forth. It does not include Subcontractor's Bid or proposal. To the extent applicable and not inconsistent with the documents described in the preceding sentence, and/or with the provisions hereof, this contract also includes the American Institute of Architects Document No. A-201 (A-201 CMA if a Construction Management Project) General Conditions for the Construction of Buildings, latest edition, as fully as if herein set forth; provided that: (1) if there is no Architect assigned to the work during the construction phase, the rights of the parties shall be determined without the necessity of any certificate, determination or other function to be performed by an Architect under any Contract Documents, and (2) in any instance where the Contract Documents do not specifically provide for arbitration or are silent thereon, arbitration shall not be considered part of this contract. In performance of this contract, Subcontractor assumes toward TPC all the obligations, including Administrative and Procedural, TPC assumes toward the Owner/Contractor, and TPC shall have all the rights and remedies as to Subcontractor which the Owner/Contractor has to TPC and, except as specifically set forth herein, Subcontractor shall not have any rights as to TPC which TPC does not have to Owner/Contractor under any of the documents referred to in this paragraph.

**ARTICLE 4
INDEMNIFICATION**

- 4.1 To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless TPC, its affiliates, and its members, agents, employees, officers and successors from and against any and all liabilities, claims, causes of action or lawsuits seeking damages on account of (i) claimed extras of a sub-subcontractor, or (ii) violation of safety requirements, or (iii) personal injury or death to any person, including employees of Subcontractor, or (iv) property damage, including claims for loss of use, or (v) any other loss, in each case which arise out of or result from, or are in any way connected with any work covered by this Contract or the operations or acts of commission or omission of Subcontractor, including those of its employees, agents or officers or its sub-subcontractors, or sub-subcontractors employees, agents or officers, unless the injuries or damages are caused by the sole negligence of a party indemnified hereunder.
- 4.2 Subcontractor's indemnity obligation shall include:
- (a) Indemnity for all damages and judgment interest, all costs and fees, including all defense costs, expenses and reasonable attorney's fees, relating to or arising out of, resulting from or in any way connected with any claim, cause of action or lawsuit requiring indemnity by Subcontractor;
 - (b) All expenses, including costs, expenses and reasonable attorney fees, incurred in securing indemnity from Subcontractor if Subcontractor fails to or wrongfully refuses to fulfill any of the indemnity obligations specified and assumed under this Contract;
 - (c) The obligation to indemnify TPC for any liability imposed upon TPC to indemnify any and all entities, including but not limited to Owner/Contractor from any and all claims, demands, cause of action, suits, losses of whatever nature, including those brought by or on behalf of any and all entities, including but not limited to Owner/Contractor against TPC arising out of the selection, design, manufacture, installation or performance of the equipment and/or the labor and materials furnished under this subcontract; and
 - (d) The obligation to indemnify Owner/Contractor to the same extent and in the same manner as Subcontractor is obligated to indemnify TPC.

The indemnification obligations hereunder shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article 4. TPC, at its option, may select counsel to defend any claim, cause of action or lawsuit brought against it without impairing any obligation to indemnify imposed upon Subcontractor hereunder.

- 4.3 Subcontractor agrees that by within ten (10) days after written demand, to discharge or cause to be discharged any suit or claim on TPC bond or regarding a lien upon the premises arising out of or related in any way to the work to be performed by Subcontractor; and, in the event Subcontractor fails to do so, TPC, at its sole discretion, may use whatever means necessary to remove any such suit, claim or lien. Subcontractor shall indemnify TPC for any costs or fees, including attorney fees, incurred by TPC in removing or attempting to remove such suit, claim or lien.
- 4.4 In any and all claims against Owner/Contractor, the Architect, TPC, or any of their agents or employees by any employee of Subcontractor, any sub-subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 4.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor or any sub-subcontractor under Workers' or Workmen's Compensation Acts.
- 4.5 The obligations of Subcontractor under this Article 4 shall not extend to the liability of the Architect, its agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, its agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.
- 4.6 TPC and Subcontractor agree that Owner/Contractor is a third-party beneficiary of this Article 4 and that Owner/Contractor may proceed directly against Subcontractor to enforce the terms herein.

**ARTICLE 5
INSURANCE AND BONDS**

5.1 Subcontractor shall purchase and maintain such insurance protecting it from claims under workmen's compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to property, which may arise out of or result from Subcontractor's (or anyone directly or indirectly employed by him) operations under this Contract. This insurance will be written for not less than the limits of liability specified under Section 5.2 hereof or as required by applicable law, whichever is the greater, and shall include additional contractual liability insurance as applicable to Subcontractor's obligations under Article 4 hereof, and shall name each of TPC and the Owner/Contractor as an additional insured.

5.2 Prior to starting work, Subcontractor shall obtain the required insurance from a responsible insurer, and shall furnish satisfactory evidence to TPC that Subcontractor has complied with such insurance requirements. Subcontractor shall furnish to TPC certificates of insurance coverage naming TPC Systems as an additional insured in the following minimum limits:

Workmen's Compensation	Statutory Limits, regardless of whether such coverage is required by the relevant jurisdiction.		
Comprehensive General Liability	\$1,000,000 Per Occurrence	\$1,000,000	To include Bodily Injury, Property Damage, Completed Operations, Broad Form and Contractual Liability
Comprehensive Automotive Liability	\$1,000,000 Per Occurrence	\$1,000,000	To include Bodily Injury and Property Damage

The certificates of insurance shall provide that thirty (30) days' written notice will be given to TPC prior to any modifications or cancellation of the insurance referred to therein.

5.3 In the event Subcontractor is performing excavation work, Subcontractor's Property Damage Liability Insurance shall include protection against explosion, collapse, and undermining, as well as coverage for injury to or destruction of subsurface utilities.

5.4 If required by TPC, Subcontractor shall provide to TPC, at no additional cost to TPC, performance and maintenance bonds in standard forms acceptable to TPC, which bonds shall be conditioned upon Subcontractor's faithful performance of all of its obligations under this Contract. Subcontractor shall also provide TPC, at no cost to TPC, a payment bond in standard form acceptable to TPC conditioned upon payment for all labor, material, and other things used in the performance of the work to which this Contract relates. Such bonds shall be issued by a surety company properly authorized to do business in principal amounts acceptable to TPC. No change order, extension of the time of completion, failure to enforce any rights arising under this Contract, or other act of forbearance of TPC shall, unless specifically otherwise agreed by TPC, operate to release or discharge any surety or sureties under any such bond.

**ARTICLE 6
PERMITS**

6.1 Subcontractor will comply with Federal, State and Municipal laws, rules and regulations in the performance of the work and in the employment of persons, and shall obtain all necessary licenses and permits and pay all fees, taxes and other charges required thereby, and furnish, upon TPC request, evidence of compliance with any law and the payment of any fee, tax or charge. Subcontractor will indemnify and hold harmless TPC against any and all claims, charges, liens, garnishments and levies arising out of Subcontractor's failure to comply as required by this Section 6.1.

**ARTICLE 7
LIENS**

7.1 Subcontractor agrees that by signing this Contract, Subcontractor hereby waives any and all lien rights it may have relating to or arising out of the work to which this Contract relates. Subcontractor further agrees that Subcontractor shall keep the premises, Owner's/Contractor's funds, and the work to which this contract relates (including any payment bond given by TPC to the Owner/Contractor) free and clear of all claims and mechanics, materialmen, or construction liens, and will promptly pay for all labor (including fringe benefits), material and services used by it in connection with this Contract. Notwithstanding anything to the contrary contained in this Section 7.1, Subcontractors shall, on a monthly basis (or on a schedule as otherwise agreed between TPC and Subcontractor) furnish TPC such certificate of payment, waivers of claims (including claims against any payment bond), waivers of mechanics liens, releases and sworn statements in form satisfactory to TPC and the Owner/Contractor, as TPC may request. If any lien remains unsatisfied after all payments are made, Subcontractor agrees to either bond off the lien or refund to TPC, all monies that TPC may be compelled to pay in discharging such lien, including all costs and reasonable attorney fees. It is further agreed and recognized between Subcontractor and TPC that monies received by Subcontractor in response to its application for payment which are owed to Subcontractors' subcontractors, suppliers or laborers, are held by Subcontractor as trustee in trust for the benefit of such subcontractors, suppliers, or laborers.

**ARTICLE 8
SCHEDULE**

8.1 Subcontractors shall provide TPC with any requested scheduling information for Subcontractors' work. Subcontractor shall perform and complete all work according to TPC project progress schedules when and in such sequence as directed by TPC, verbally or in writing, with labor and materials in compliance with the Contract Documents, to the satisfaction of TPC and so as not to conflict or interfere with the work of others or the activities of the Owner/Contractor. Time is of the essence in this contract. Subcontractor shall indemnify and hold harmless TPC from and against any penalty, liquidated damages, or liability of TPC to Owner/Contractor or others resulting from Subcontractor's failure to perform within the agreed time. In the event Subcontractor's performance is delayed or interfered with by acts of the Owner/Contractor, TPC or other Subcontractors, Subcontractor may request an extension of time of performance as herein provided, but shall not be entitled to any increase in the contract price or any additional compensation or consequential damages as a result of such delays or interference except to the extent that the Contract Documents entitle TPC to compensation from the Owner/Contractor for such delays, and then only to that amount which TPC shall actually recover from the Owner/Contractor on behalf of Subcontractor for such delays, and Subcontractor hereby expressly waives and releases any other or further right to damages or additional compensation.

**ARTICLE 9
PERFORMANCE STANDARDS**

9.1 In the event that Subcontractor refuses or neglects to supply a sufficient number of properly skilled workmen, or a sufficient quantity of materials of proper quality, or fails to perform timely to the project schedule, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for benefit of creditors, or turns over its assets per a Trust Chattel Mortgage, or files a petition for receivership or liquidation with a State or Federal Court, or files for re-organization or liquidation, or has as appointed against it a receiver over a substantial part of its assets, or has a creditors committee appointed, or consents to the formation of a creditors committee, or has a secured creditor foreclose upon a substantial part of its assets, or

has a creditor issue an execution or garnishment, or has a levy issued by the Internal Revenue Service or any other taxing authority, any or all of which is done without TPC consent, or fails to make prompt payment to his subcontractors, materialmen or laborers, or fails in any respect to properly and diligently prosecute the work covered by this Contract, or otherwise fails to perform fully any and all of the covenants herein contained, or fails to provide lien waiver as required or fails to provide certificates of payment from materialmen or its subcontractors or has its bond terminated or becomes ineligible for any reason for the issuance of a bond, TPC may, at its option, without prejudice to any rights or remedies after giving forty-eight (48) hours written notice to Subcontractor (or notice as may be required by bond provisions): (1) provide any such labor and materials as may be deemed necessary by TPC in its sole and absolute discretion. TPC shall determine how to prosecute the work and take whatever other action it deems necessary to expedite or complete the work, and deduct the cost thereof, including TPC overhead, from any money then due or thereafter to become due to Subcontractor under this Contract; or (2) TPC may, at its option, terminate Subcontractor's right to proceed with the work, and, in that event, TPC shall have the right to enter upon the premises of the project or Subcontractor's warehouse where paid for materials are stored and take possession of, for the purpose of completing, the work included under this Contract, all materials, tools and appliances thereon, and may employ any other person or persons to finish the work and provide the materials therefore. In case of such discontinuance of Subcontractor's right to proceed with the work, Subcontractor shall not be entitled to receive any further payments under this Contract until the work in this Contract undertaken by TPC is completely finished. At that time, if the unpaid balance of the amount to be paid under this Contract exceeds the expenses incurred by TPC finishing Subcontractor's work, such excess shall be paid by TPC to Subcontractor, but, if such expense shall exceed such unpaid balance, then Subcontractor shall pay to TPC the amount by which such expense exceeds such unpaid balance within ten (10) days of demand by TPC. It is understood and agreed that the contract price includes an amount as a premium for prompt completion of the contract scope of work. Should Subcontractor, its, assigns, or successors fail to take timely and continuous action to promptly complete the project after notice by TPC, then the contract amount will be reduced by a percentage to be determined at that time.

- 9.2 The parties recognize that TPC is contractually obligated to have the work specified performed on schedule and within approved budget. TPC may therefore, at any time, request, in writing, adequate assurances of future performance by Subcontractor, including a showing of the financial resources necessary to complete the work on schedule. TPC shall have the right, at reasonable times, to audit Subcontractor's books and records relative to claims or performance under this Contract, and shall be entitled to make photocopies thereof. Failure of Subcontractor to provide satisfactory assurances within five (5) days of delivery of the request shall be an event of default. In all events, preceding TPC receipt of adequate assurances of performance, TPC shall be entitled to perform the work of Subcontractor, with TPC personnel or by engaging other contractors, on a time and material or other appropriate basis. The cost of which will be back-charged against the contract sum herein.

ARTICLE 10 SAFETY

- 10.1 Subcontractor is fully responsible for safety, and for providing a safe workplace for its employees and others, and agrees to cooperate with TPC on any overall project Safety Program, to submit its own trade related Safety Program and rules which shall be at least as stringent as set forth in TPC Safety Program. Subcontractor shall take all reasonable precautions for the safety of employees on the project, to actively assist in the prevention of accident injury to persons or property in, about or adjacent to the premises where work is being performed, and to comply with all federal, state and local safety laws and ordinances applicable to the work. Failure of Subcontractor to comply with the foregoing may be grounds for withholding progress or final payments. Subcontractor agrees to cooperate with TPC on any overall Substance Abuse program and will provide a copy of its own Substance Abuse Policy to TPC prior to commencement of work.
- 10.2 Subcontractor and any of its sub-subcontractors and suppliers shall comply with all requirements of any State or Federal Right-to-Know Law, specifically, Subcontractor shall: (i) maintain at a location(s) provided by TPC, a copy of all Material Safety Data Sheets (MSDS) for each hazardous chemical, and have a copy of same available for its employees; (ii) provide required training of its employees; (iii) submit a copy of its written Hazard Communication Program to TPC; and (iv) properly label all containers of hazardous chemicals or materials that are brought on the job site or used in the performance of this contract. Failure to comply with the foregoing requirements will be considered a material breach of this contract.

ARTICLE 11 WORKMANSHIP; WARRANTY; USE OF TOOLS/EQUIPMENT

- 11.1 Subcontractor shall be responsible for the layout and correctness of its work. If Subcontractor shall (i) fail to correct, replace and/or re-execute faulty or defective work and/or materials furnished under this contract, (ii) fail to complete or diligently proceed with this contract within the time period provided in the Contract Documents, (iii) fail to correct or repair any damage to work caused by it or by its failure to protect its work, or (iv) be unable to proceed with the work because of any action by one or more employees of Subcontractor or by a person or labor organization purporting or attempting to represent any employee of Subcontractor, then TPC may consider a material breach has occurred, and, upon three (3) days notice to Subcontractor, shall have the right, but not the duty, to correct, replace and/or re-execute such faulty, defective or damaged work or to take over its contract with all materials, tools and appliances of Subcontractor on the premises, and to complete the contract, charging the cost, including, but not limited to, any and all legal fees and costs, plus a mark-up of General Conditions to monitor the work thereof to Subcontractor. Under such circumstances, TPC shall also have the right to withhold any and all payments to Subcontractor until all such cost charges have been paid in full to TPC. Further, if Subcontractor shall fail to complete its work on time, resulting in loss or damage to TPC, whether or not damages are stated liquidated damages in the Contract Documents, TPC shall be entitled to recover any damages caused by Subcontractor's breach. The remedies of TPC provided by law, by this paragraph, and by the Contract Documents shall be cumulative.
- 11.2 Subcontractor hereby warrants, for a period of twelve (12) months from the date of completion of installation, that all work will be free from defects and will conform to the requirements of this Subcontract Order and the Contract Documents. Work not performed to these requirements, including substitutions not properly approved and authorized shall be considered defective. Any defects shall be repaired promptly upon notification by TPC, and the labor necessary to repair such defective work will be provided free of charge for a period twelve (12) months following the completion of the original installation.
- 11.3 Subcontractor and TPC shall not use or permit any of their employees to use any equipment, hoists, staging, scaffolds, or any other material belonging to the other without prior written agreement.

ARTICLE 12 CLAIMS

- 12.1 Subcontractor agrees to make any claim for extra work, for extension of time, for delay or for damages if authorized in the Contract Documents in the same manner as provided in the Contract Documents and in such time as will enable TPC to promptly submit such claims to the Owner/Contractor for payment or recognition, and TPC shall not be liable to Subcontractor on any claim not timely or properly presented, unless allowed by the Owner/Contractor. The timely and proper presentment of claims are conditions precedent to any liability by TPC to Subcontractor. Any claim for changes, delays or extra work involving compensation to be paid to Subcontractor must be submitted within one (1) week of the occurrences or events giving rise to said claim. TPC shall have the right, at reasonable times, to audit Subcontractor's books relative to claims or performance under this Contract. No Change Orders will be issued for additional work of any kind unless they are approved by the Architect and Owner/Contractor prior to issuance. In the event a controversy occurs between the Owner/Contractor and TPC concerning the Contract with the Owner/Contractor or the Change Order(s), then it is expressly agreed as a condition precedent that no compensation for these items shall be due Subcontractor from TPC until payment

for them is received by TPC , regardless of the fact that payment is delayed to TPC due to TPC negotiating as to claims with the Owner/Contractor, arbitration, administrative actions, litigations, appeals, or other similar activities.

ARTICLE 13 PAYMENT

- 13.1 TPC agrees to pay Subcontractor for the satisfactory performance of Subcontractor's work, the amounts stated on page one of this Contract. Subcontractor will submit to TPC invoices and associated TPC payment application request forms in triplicate at such times stipulated by TPC, in order that TPC may apply for payment from the Owner/Contractor under the terms of the Contract Documents. **ALL PAYMENT APPLICATIONS SHOULD BE SENT TO TPC AT THE ADDRESS SPECIFIED ON THE FRONT PAGE OF THIS CONTRACT.** TPC obligation to pay Subcontractor is expressly preconditioned (a condition precedent) upon receipt of each payment from the Owner/Contractor and the amount allowed to TPC on account of Subcontractor's work, less any retainage held by the Owner/Contractor or TPC . Release of payment for stored material shall be at the discretion of TPC and Owner/Contractor. Documentation of such stored material may be required of Subcontractor, including, but not limited to, (i) Bill of Sale, and (ii) Insurance Certificate providing coverage of stored material. TPC and Owner/Contractor shall have the right to inspect materials during business hours. However, no payment shall be taken as an admission by TPC of the amount of work done, its classification, quality, sufficiency or the sum due Subcontractor or as an acceptance or release of Subcontractor from responsibility under the terms of this contract. As to work performed in Connecticut or any state where similar laws are in effect, all funds received on the project which are in the custody and possession of TPC and are owed to a Subcontractor or its materialmen shall be segregated from the assets of TPC on its books and records, and, as such, are held in trust (if in Connecticut, in accordance with Section 713.347 of the Connecticut Lien Law) for Subcontractor, its sub-subcontractor or its materialmen, as the case may be. It is agreed between TPC and Subcontractor that any amounts which may be charged as back-charge to Subcontractor will no longer be considered as monies owed to Subcontractor or required to be held in trust by TPC . Payment received by Subcontractor shall be used to satisfy any indebtedness owed by it to any person or entity furnishing labor and materials for use in performing Subcontractor's work on this project before the payment monies are used in any other manner. Payment as used in this clause shall include retainage, progress payments, payment for change orders and extra work, and final payment. Subcontractor acknowledges that it relies solely and exclusively on the credit of the Owner/Contractor, not the contractor, for payment for its work.
- 13.2 Subcontractor, as a precondition to receiving payment, will submit Daily Construction Reports in a form satisfactory to TPC.
- 13.3 Should Subcontractor be in debt to TPC for any reason, whether in connection with this Contract or a separate contract(s), on another project(s) then TPC shall have the right to apply funds from any agreement against the debt owed.
- 13.4 Notwithstanding anything to the contrary, TPC and Subcontractor expressly agree that TPC has the contractual right to withhold from payment to Subcontractor a percentage as retention until final acceptance and payment from Owner/Contractor, and that Subcontractor's right to retention does not vest until time of final payment from Owner/Contractor and is therefore not considered as due and owing until that time, and that the right to retention is expressly preconditioned upon final payment being made by the Owner/Contractor and received by TPC .
- 13.5 To the extent payment for interest is obtained by TPC from the Owner/Contractor under the Contract Documents, a progress payment or final payment due and unpaid under this Contract shall bear interest at the rate and for the time period provided in the Contract Documents and actually received from the Owner/Contractor by TPC.
- 13.6 Subcontractor will receive the payments made by TPC and will hold such payments as a trust fund to be applied first to the payment of any persons furnishing labor, materials or services for the work under this Contract.

ARTICLE 14 TERMINATION

- 14.1 If TPC fails to make payments as provided in Article 13 hereof, Subcontractor may, upon seven (7) days' written notice to TPC, terminate this Contract and recover from TPC payment for all work completed up to the date of such termination.
- 14.2 If Subcontractor defaults or neglects to carry out the work to which this Contract relates in accordance with the Contract Documents, or otherwise fails to perform or otherwise breaches any provision of this Contract, TPC may, after three (3) days' written notice to Subcontractor, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from any payment then or thereafter due to Subcontractor or, at its option, may terminate this Contract and take possession of the site and of all materials, equipment, tools, and machinery thereon owned by Subcontractor and may finish the work to which this Contract relates by whatever method it may deem expedient and appropriate. If the expense of finishing the work exceeds the unpaid balance of the Contract sum, Subcontractor shall pay the difference to TPC.
- 14.3 TPC may, at its option, terminate this Contract in whole or in part at any time by written notice thereof to Subcontractor, whether or not Subcontractor is in default. In that event, or in the event the construction work on the project is stopped for any reasons beyond TPC control, or if Owner/Contractor terminates its contract with TPC, then in any such cases TPC sole obligation to Subcontractor shall be to pay for the actual cost of the work completed by Subcontractor at the time of termination, less any sums which Subcontractor may have previously received on account of its work performed.

ARTICLE 15 SITE CLEAN-UP

- 15.1 Subcontractor will, at all times, keep the job clean and clear of all debris and rubbish resulting from its operations, and, upon completion of its work, will promptly remove all tools, equipment and excess material and any rubbish caused by its work and personnel. Subcontractor will protect all of its materials and work from hazards and be fully responsible for their condition until accepted by the Owner/Contractor, and shall also be responsible for any damage caused by it to the work or property of others, including, but not limited to, the property of the Owner/Contractor or TPC. Subcontractor will reimburse TPC for any expenses incurred to keep the job clean and clear of all debris and rubbish resulting from Subcontractor's failure to comply with this paragraph. Disputes regarding charges for clean-up will be resolved by expedited arbitration through the American Arbitration Association.

ARTICLE 16 CONFIDENTIAL INFORMATION, NON-DISCLOSURE, NON-SOLICITATION

- 16.1 Subcontractor recognizes that TPC is engaged in a continuous program of research, development, and production respecting its business, present and future, including fields generally related to its business and that TPC possesses and will possess in the future confidential, non-public information that has been created, discovered, or developed by them and/or confidential information which has been assigned or otherwise conveyed to TPC and is of commercial or other value to the business in which TPC is engaged ("Confidential Information"). By way of illustration, but not limitation, Confidential Information includes trade secrets, processes, formulas, data and know-how, software, documentation, program files, flow/charts, drawings, techniques, source and object code, standards, specifications improvements, inventions, techniques, customer information, employee information, accounting data, statistical data, research projects, development and marketing plans, strategies, forecasts, computer programs, and customer lists. For purposes of this Agreement, Confidential Information shall not include any information which (i) at the time of disclosure or

thereafter is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by you or your Representatives), (ii) was available to Subcontractor on a non-confidential basis from a source other than TPC, provided that such source is not and was not bound by a confidentiality agreement with TPC, or (iii) has been independently acquired or developed by Subcontractor without violating any of its obligations under this Agreement.

- 16.2 All Confidential Information shall be the sole and exclusive property of TPC and its assigns, and TPC and its assigns shall be the sole owner of all copyrights, patents, and other rights in connection with the Confidential Information. Subcontractor hereby assigns to TPC any rights Subcontractor may have or acquire in the Confidential Information. At all times, both during the term of this agreement and thereafter, Subcontractor will keep in confidence and trust all Confidential Information, and Subcontractor will not use or disclose any Confidential Information or anything relating to it without the written consent of TPC, except as may be necessary in the ordinary course of performing Subcontractor's services for TPC. The Subcontractor agrees that, except as directed in writing by TPC, it will not at any time during or after the term of this Agreement disclose any Confidential Information to any person whatsoever, or permit any person whatsoever to examine and/or make copies of any reports or documents prepared by Subcontractor or that come into Subcontractor's possession or are under Subcontractor's control.
- 16.3 Subcontractor will not, directly or indirectly, either for itself or any other third person or entity, (A) induce or attempt to induce any employee of TPC to leave the employ of TPC, (B) in any way interfere with the relationship between TPC and any employee of TPC, (C) employ, or otherwise engage as an employee, independent contractor, or otherwise, any employee of TPC, or (D) induce or attempt to induce any customer, supplier, licensee, or business relation of TPC to cease doing business with TPC, or in any way interfere with the relationship between any customer, supplier, licensee, or business relation of TPC. Subcontractor will not, directly or indirectly, either for itself or any other third person or entity, solicit the business of any person or entity known to Subcontractor to be a customer of TPC, whether or not Subcontractor had personal contact with such third person or entity, with respect to products or activities which compete in whole or in part with the products or activities of TPC.
- 16.4 If applicable this agreement is bound by the HIPAA Business Associate Agreement terms at the following hyperlink:
<https://tpcsystems.com/wp-content/uploads/2021/12/BAA-1-1-22.pdf>

ARTICLE 17 MISCELLANEOUS

- 17.1 All labor, materials and equipment consumed, supplied or disposed of under this Contract, shall conform to applicable provisions and requirements of local, state and federal safety regulations and other government agencies' laws, rules and regulations. It shall be the responsibility of Subcontractor to furnish its employees a place of employment free from recognized hazards that cause, or are likely to cause death or serious physical harm. Subcontractor shall be liable for damages as the result of the failure of it or its employees or subcontractors to follow the provisions as set forth in Articles 9, 10 and 11. Subcontractor will indemnify and hold harmless TPC against any and all fees or fines, which may result from Subcontractor's failure to comply with the requirements set forth in Paragraphs 9, 10 and 11.
- 17.2 **It is agreed that Subcontractor shall make no assignment in whole or in part of its rights or duties with regard to this Contract, nor shall Subcontractor subcontract any of the work provided for herein, without the prior express written consent of TPC, and no assignment is valid without pre-approval by TPC.** Should an assignment or subcontracting out of the work be made as allowed herein, Subcontractor agrees to indemnify, hold harmless and defend TPC against any and all claims, charges and judgments which may result from said assignment or subcontract. Subcontractor further understands and recognizes that, in making the assignment or subcontracting out of the work, it gives up all of its rights in regard to the distribution of payment of the funds/monies due under the assignment from that point in time when the assignment becomes effective. In the event Subcontractor does make an assignment of any monies due under this contract, the assignment shall contain a clause to the effect that the assignee's right in and to any money shall be subject to the claims of all persons or firms for services rendered or materials supplied for performance of that work under this contract.
- 17.3 This Contract constitutes the entire understanding of the parties and supersedes any prior proposal or agreement, and shall not be modified, amended or revoked except in writing executed by TPC. Should any portion of this contract be held invalid or unenforceable, the remainder of the contract shall be valid and enforceable to the fullest extent permitted by law. The failure of TPC to enforce at any time any of the provisions of this Contract, or to require at any time performance by Subcontractor of any of the provisions hereof, shall in no way be construed to be a waiver, nor in any way to affect the validity of this Contract or any part thereof or the right of TPC to thereafter enforce each and every provision. Reference in this Contract to Subcontractor's quotation or bid does not imply acceptance of any terms and conditions in such quotation or bid. Any terms and conditions of such quotation or bid which are in addition to or inconsistent with the terms and conditions contained in this Contract shall not be part of this Contract. The indemnification provisions contained herein shall survive the completion of this Subcontract Order. This Contract shall be governed by the laws of the state where the project is located. In the event there is a legal action filed against or by Subcontractor and TPC is made a party to the action, the prevailing party will be entitled to actual attorney fees.
- 17.4 An acknowledgment or acceptance which contains terms in addition to or inconsistent with the terms and conditions of this Contract, or a rejection of any term of this Contract, shall be deemed to be a counter-offer to TPC, and shall not be binding upon TPC unless acceptance thereof is made in writing to Subcontractor. However, performance by Subcontractor in the absence of written acceptance of such counter-offer by TPC shall be deemed to be performance in accordance with the terms of this Contract TPC as they originally executed.