APPENDIX 1

SAMPLE LIQUIDATING AGREEMENTS
SAMPLE 1
COOPERATION AND LIQUIDATION AGREEMENT

This Cooperation and Liquidation Agreement (hereinafter “Agreement”) is made this _____ day of __________ 20__, by and among __________ (“PRIME CONTRACTOR”) and ______________ (“SUBCONTRACTOR”).

WHEREAS, on or about ____________, 20__, PRIME CONTRACTOR and __________ (“Government”) entered into contract for PRIME CONTRACTOR to be the design build prime contractor for the __________________________, contract number ______________ (the Project); and

WHEREAS, PRIME CONTRACTOR and SUBCONTRACTOR entered into a __________, dated ____________, 20__, to provide certain professional services to Prime Contractor for the Project (“Subcontract”); and

WHEREAS, on or about ____________, 20__, SUBCONTRACTOR submitted to PRIME CONTRACTOR a Request for Equitable Adjustment (“REA”), in the amount of approximately $________, seeking recovery for the costs associated with the Government’s failure to timely provide information in its superior knowledge of differing subsurface site conditions (“DSC) causing additional work and time on the Project; and

WHEREAS, PRIME CONTRACTOR disputes any responsibility for SUBCONTRACTOR’s increased costs as set forth in the REA on the grounds that said costs were caused by the Government, except to the extent, if any, of recovery from the Government on the aforesaid REA; and

WHEREAS, the parties recognize that SUBCONTRACTOR and PRIME CONTRACTOR have both incurred reimbursable costs because of the DSC at the Project and desire to convert the SUBCONTRACTOR REA into a claim and to pursue a joint claim to the Government through PRIME CONTRACTOR; and

WHEREAS, PRIME CONTRACTOR and SUBCONTRACTOR agree to cooperate in the prosecution of the joint claim to be filed against the Government; and

WHEREAS, PRIME CONTRACTOR, on the one hand, and SUBCONTRACTOR, on the other, desire to mutually release each other from any and all liability, charges, backcharges, requests for equitable adjustment, claims, counterclaims, or causes of action of every character whatsoever arising out of or relating to the performance of the work under the SUBCONTRACT, except as set forth in this Agreement; and

WHEREAS, PRIME CONTRACTOR and SUBCONTRACTOR agree, upon the execution of this Agreement, to proceed only against the Government in the prosecution of the joint claim which SUBCONTRACTOR may have under the SUBCONTRACT referred to herein; and

WHEREAS, the parties desire to express their agreement upon the prosecution of the joint claim and provide for the payment of the joint claim prosecution and expenses; and
NOW THEREFORE, in consideration of the promises and agreements of the parties hereto, each to the other, and other good and valuable consideration, the parties hereto agree as follows:

1. The recitals set forth above are incorporated herein and made a part of this Agreement.

2. PRIME CONTRACTOR shall, on behalf of SUBCONTRACTOR, present the converted claim identified by SUBCONTRACTOR to the Government, and PRIME CONTRACTOR and SUBCONTRACTOR agree that such SUBCONTRACTOR claim shall be presented to the Government along with PRIME CONTRACTOR’s claim arising out of the DSC (hereinafter referred to as “Consolidated Claims”). Before proceeding to arbitration or litigation on the Consolidated Claim, PRIME CONTRACTOR agrees that in the first instance it shall discuss with SUBCONTRACTOR the decision to litigate and attempt to reach a consensus, but failing any consensus on how to proceed then the parties agree that PRIME CONTRACTOR, as it determines is appropriate in its sole and absolute discretion, may pursue the Consolidated Claim to the extent commensurate with good contract administration and attempting to achieve the optimum recovery on the Consolidated Claim as a whole.

3. For purposes of this Agreement and the releases set forth herein, the names “SUBCONTRACTOR” and “PRIME CONTRACTOR” shall mean and include the following persons and/or entities: the named party, individually, jointly, severally and on behalf of its respective affiliated and/or subsidiary companies and partnerships, together with any and all past and present trustees, receivers, board members, employees, officers, directors, shareholders, partners, agents, representatives, subsidiaries, unincorporated divisions, sureties, guarantors, consultants, attorneys, successors, assigns, heirs, executors, administrators, tenants, licensees, invitees, joint venturers, members, managers, lower-tier subcontractors and suppliers, and related persons, predecessors, entities or companies.

4. SUBCONTRACTOR hereby fully and irrevocably releases, acquits, and discharges PRIME CONTRACTOR of and from any and all past, present and future fixed or contingent, matured or unmatured, liquidated or unliquidated, known or unknown, claims, causes of action, counter-claims, cross-claims, liabilities, rights, demands, penalties, assessments, damages, requests for equitable adjustment, suits, lawsuits, costs, actions, administrative proceedings, arbitration proceedings or orders, losses, and damages, of whatever nature, character, type, or description, whenever and however occurring, whether at law or in equity, and whether sounding in tort or contract or any statutory or common law claim or remedy of any type related to or arising out of the Subcontract, the Project, and/or the Payment Bond, except as specifically set forth in this Agreement.

5. PRIME CONTRACTOR hereby fully and irrevocably releases, acquits, and discharges SUBCONTRACTOR of and from any and all past, present and future fixed or contingent, matured or unmatured, liquidated or unliquidated, known or unknown, claims, causes of action, counter-claims, cross-claims, liabilities, rights, demands,
penalties, assessments, damages, requests for equitable adjustment, suits, lawsuits, costs, actions, administrative proceedings, arbitration proceedings or orders, losses, and damages, of whatever nature, character, type, or description, whenever and however occurring, whether at law or in equity, and whether sounding in tort or contract or any statutory or common law claim or remedy of any type related to or arising out of the Subcontract, the Project, and/or the Payment Bond, except as specifically set forth in this Agreement.

6. It is understood that the facts with respect to which the foregoing releases are given may hereafter turn out to be other than or different from the facts in that connection now known or believed to be true by SUBCONTRACTOR or PRIME CONTRACTOR and each therefore expressly assumes the risk of the facts turning out to be so different and agrees that the foregoing releases shall be in all respects effective and not subject to termination or rescission by any such difference in facts.

Notwithstanding anything in this Agreement to the contrary:

a. PRIME CONTRACTOR shall remain liable to SUBCONTRACTOR on SUBCONTRACTOR’s claim to the extent that the Government is finally determined to be liable to PRIME CONTRACTOR thereon. In the event that the Government shall fail or refuse to pay to PRIME CONTRACTOR for SUBCONTRACTOR’s claim, the parties shall work cooperatively to recover from the Government on SUBCONTRACTOR’s Claim; and

b. SUBCONTRACTOR and PRIME CONTRACTOR expressly reserve all rights, claims, and defenses relating to enforcement of this Agreement.

7. PRIME CONTRACTOR and SUBCONTRACTOR agree to diligently support and cooperate with each other in the pursuit of their Consolidated Claim against the Government. SUBCONTRACTOR specifically agrees to produce party witnesses insofar as reasonably possible and to disclose and furnish documents, letters, records, papers and other potentially relevant materials at its own expense to PRIME CONTRACTOR. Further, SUBCONTRACTOR agrees to furnish to PRIME CONTRACTOR, at SUBCONTRACTOR’s sole expense, any and all documents related to each and every assertion made by the Government that relates to SUBCONTRACTOR’s performance on the Project and/or the quality of SUBCONTRACTOR’s work. SUBCONTRACTOR also agrees to provide PRIME CONTRACTOR with the support of all persons knowledgeable of the Project for use by PRIME CONTRACTOR in its claim prosecution with the Government or to the extent such persons may be required to provide testimony during discovery or during any trial or board proceeding between PRIME CONTRACTOR and the Government.

8. With respect to the presentation to the Government of the Consolidated Claim, it is agreed that PRIME CONTRACTOR will prosecute it promptly and vigorously, will comply with the terms of the schedule and detailed budget for the prosecution of the Consolidated Claim furnished contemporaneously with the execution of this Agreement and will meet or conduct a conference call with SUBCONTRACTOR no less often than monthly to report on the progress and discuss strategy with SUBCONTRACTOR.
PRIME CONTRACTOR will itemize the amount of SUBCONTRACTOR’s claim separately in the Consolidated Claim and in any subsequent presentation before any board or court. Further, PRIME CONTRACTOR will seek to obtain an award or to negotiate a settlement on a basis whereby the amount allocated or awarded for SUBCONTRACTOR’s claim will be itemized. It is further agreed that PRIME CONTRACTOR will request and seek an award which itemizes any offsets and claims by the Government. In the event that PRIME CONTRACTOR are unable to obtain a settlement or an award where the amount allocated or awarded on SUBCONTRACTOR’s claim is separately itemized, and instead a lump sum settlement or award is made, it is agreed that PRIME CONTRACTOR will seek a settlement or award of the Consolidated Claim, which attempts to achieve the optimum recovery and in accordance with sound contract administration. It is understood by the parties hereto that PRIME CONTRACTOR have the right to settle the Consolidated Claim to be presented to the Government, which will include the claim asserted by SUBCONTRACTOR, subject to the approval of SUBCONTRACTOR which shall not be unreasonably withheld, and that PRIME CONTRACTOR have the right to decide the forum and manner in which the Consolidated Claim will be presented and prosecuted. In the event of such a lump sum settlement or award as to the Consolidated Claim, or if the parties are otherwise unable to determine or agree upon the amount allocated in any award or settlement to SUBCONTRACTOR’s Claim or resulting claim, then SUBCONTRACTOR will agree to accept as full and final settlement, its pro rata share of the total recovery calculated by the amount of SUBCONTRACTOR’s pass-through claim divided by the Consolidated Claim amount (including the claims of all participating parties) which results in a fraction that is then multiplied by the total amount of the Consolidated Claim recovery by PRIME CONTRACTOR against the Government on this Project for all parties.

9. Any claim recovery on behalf of SUBCONTRACTOR, whether specifically allocated or awarded or agreed to by the parties or computed as a pro rata share of the total recovery, shall be subject to deductions for SUBCONTRACTOR’s share of all expenses incurred by PRIME CONTRACTOR in the development and prosecution of the Consolidated Claim and resulting claims against the Government. SUBCONTRACTOR’s share of said expenses shall be determined by calculating the amount of SUBCONTRACTOR’s total claimed amount divided by the total claimed amount on the Consolidated Claim against the Government on this Project on behalf of all parties participating in the Consolidated Claim which results in a fraction that is then multiplied by the total expenses incurred by PRIME CONTRACTOR pursuant to Paragraph 10 of this Agreement. Any net claim recovery on SUBCONTRACTOR’s behalf, after deducting SUBCONTRACTOR’s share of expenses, as described in this paragraph, shall be payable to SUBCONTRACTOR within 10 days of receipt of the total Claim recovery proceeds from the Government.

10. After the date of this Agreement, attorneys, outside consultants and experts such as auditors, schedule analysts, engineers, etc., have been and/or will be retained by PRIME CONTRACTOR, as it deems appropriate in its sole and absolute discretion, for the development, presentation and arbitration or litigation of the Consolidated Claim against the Government or defense of claims or assertions by the Government and it is agreed that all such costs shall be funded by PRIME
Upon the final resolution of the Consolidated Claim against the Government, SUBCONTRACTOR will be responsible for its share of said costs referred to in this Paragraph 10 as determined in Paragraph 9 of this Agreement, regardless of the outcome of the Consolidated Claim.

11. Presentation, mediation, arbitration or litigation of all matters regarding entitlement recovery which are contained in the overall Consolidated Claim or defense of assertions or claims by the Government shall be handled by the attorneys representing PRIME CONTRACTOR. PRIME CONTRACTOR agree that SUBCONTRACTOR has the right to attend any negotiations, mediations, arbitrations board hearings and Court hearings involving SUBCONTRACTOR’s Claim or any the Government claims against PRIME CONTRACTOR.

12. PRIME CONTRACTOR and SUBCONTRACTOR hereby mutually acknowledge that this instrument constitutes their entire understanding of the terms of their agreement pertaining to the matters covered by this Agreement. Any modification of this Agreement must be made in writing and executed by all the parties hereto. This Agreement shall remain in full force and effect unless and until terminated by an instrument in writing executed by all the parties hereto.

13. This Agreement shall be binding upon and inure to the benefit of the respective parties and all of their successors and assigns.

14. The laws of the State of __________ shall govern the interpretation and performance of this Agreement.

15. Should any portion of this Agreement be found unenforceable by a court of competent jurisdiction, such unenforceable portion shall be struck from the Agreement and the remainder of the Agreement shall continue in full force and effect.

16. The parties acknowledge that they have had the opportunity to consult legal counsel of their choosing, that they understand the terms of this Agreement, that no other promise or inducement has been made except as set forth herein, and that they sign voluntarily. The parties acknowledge that this Agreement was the product of negotiations among the parties and agree that this Agreement was mutually drafted by the parties.

17. The parties to this Agreement, PRIME CONTRACTOR and SUBCONTRACTOR, hereby mutually acknowledge that the negotiated terms and conditions of this Agreement are confidential and the parties mutually agree to not disclose the terms and conditions of this Agreement to any third party, except as may be reasonably necessitated by some reporting requirement.

18. This Agreement may be executed in any number of counterparts and facsimile signatures shall be considered as originals.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals in execution hereof this ____ day of __________ 20________.
PRIME CONTRACTOR

Date: _____________  By: ________________________________

SUBCONTRACTOR

Date: _____________  By: ________________________________
SAMPLE 2
LIQUIDATING AGREEMENT

This Agreement made this ________ day of ______, 2017 between (Contractor Company’s name) (Contractor, and (Subcontractor Company name) (“Subcontractor”) as follows,

RECITALS

A. Company served as general contractor on a project known as (Project name) (the "Project") in relation to certain renovation and new construction work at the premises.

Construction commenced ________ and was substantially completed on ________.

B. (Subcontractor name) ("Subcontractor") was a subcontractor to Company by agreement dated ________________ whereby Subcontractor was to perform a certain scope of work concerning ________ and other related work.

C. During the course of the project, Company and Subcontractor filed claims for extras, delay, out of sequence work, etc. Subcontractor presented its claims to Company, who presented its claims to the Owner. In addition, Company presented its own claims to the Owner. As of this date those claims have not been acted upon by the Owner.

D. The project is now complete and Company is attempting to resolve all claims with the Owner, including claims for extras, delay, out of sequence work, etc.

E. In order to provide Subcontractor with a mechanism to pursue its claim directly against the Owner as a "pass through" Company and Subcontractor, through its receiver, hereby agree as hereinafter set forth.

F. In consideration of the mutual recitals above the parties have agreed as follows:

1. Company agrees to allow Subcontractor to make claims directly against the Owner through Company. Any such claims brought by Company, whether in arbitration, mediation or litigation are to be brought solely at Subcontractor's cost and expense and such expenses shall include all litigation costs, attorney's fees, consulting, consultation fees, expert fees,
administrative costs, filing fees and any other expenses associated with prosecution of Subcontractor's claims in any forum.

2. Company agrees to cooperate and assist Subcontractor and counsel of Subcontractor's choice, in preparing and presenting such claims. Company cooperation is limited to providing documentation, attendance at hearings and presentation of testimony.

3. Subcontractor looks solely to the Owner for compensation for any issues which are the subject matter of this agreement as set forth in paragraph A, i.e. Subcontractor's claim.

4. Subcontractor agrees to accept any award that it receives, including an award of zero compensation as full compensation for all of its claims against the Owner and Company and a full discharge thereof. In the event that the Owner commences a counterclaim against Company which is not related to the subject matter of the issues presented by Subcontractor, Company agrees that it will be responsible and defend any such non related counterclaim. However, in the event the Owner prosecutes a counterclaim against Company arising out of the claims of Subcontractor then Subcontractor agrees to defend and indemnify Company against any loss, liability or judgment in connection with such counterclaim.

5. Company agrees to remit to Subcontractor the full proceeds of any judgment, settlement or award that is made in Company' name, less ten percent (10%) of the net recovery, which shall be retained by Company as a reasonable markup on the subcontractor's work. The term net recovery is defined as an amount equal to the total judgment settlement or award in favor of Subcontractor, including interest costs and attorney's fees if awarded.

6. Subcontractor agrees, prior to the presentation of its claim in any form, to give Company a full and reasonable opportunity to review the claims to ensure that such claims presented in Company' name are bona fide and have a reasonable basis in fact.

7. In relation to any claims between Subcontractor and the Owner, Company shall have no determination or opinion as to any offers of settlement between Subcontractor and the Owner.
Subcontractor shall be the sole authority to settle any matter between the Owner and Subcontractor in relation to any of the Subcontractor claims.

8. In the event that the Owner settles with Company in whole or in part, Company will act in good faith in pursue Subcontractor’s claims as noted in this Agreement.

9. This Agreement supercedes and merges all prior understandings, negotiations and Agreements between the parties whether written or oral with respect to the presentation and resolution of all claims that Subcontractor may have relating to the project.

WHEREFORE the parties have agreed to the terms and conditions set forth above this day of ____________ , 20____, and cause this Agreement to be executed.

(CONTRACTOR)
By: __________________
Witness: _____________

(SUBCONTRACTOR)
By: __________________
Witness: _____________

A is going to be Exhibit — Subcontractor’s contract with Company

B is going to be Subcontractor’s claim
SAMPLE 3
AGREEMENT TO PROSECUTE AND PASS THROUGH SUBCONTRACTOR CLAIMS

This Agreement to Prosecute and Pass Through Subcontractor Claims ("Agreement") is entered into by and between _______ ("_____") and ___________ ("_____"); as of this ____ day of ___, 20___ (the "effective date"). ____ and ______ are sometimes referred to herein collectively as the "Parties."

WITNESSETH:

WHEREAS, _____ entered into a Contract with ________ ("Owner"), dated ________, ___ ("Contract"), with regard to a project known as ___________________ (the "Project"); and

WHEREAS, ____ and ______ entered into a Subcontract dated ___________ ("Subcontract") for the performance of a portion of the work contracted to ____ and described in greater detail in the Subcontract; and

WHEREAS, as a consequence of work performed under the Subcontract, Subcontractor filed a Complaint to [Foreclose Mechanics Lien on a Public Improvement, for an Accounting, and Other Relief] in the Circuit Court of [Cook County, Chancery Division], Case No. ______, seeking $_________, plus interest, against numerous parties involved with the Project, including __________;

WHEREAS, __________, on behalf of Subcontractor, has attempted to resolve, through negotiation, mediation and an upcoming arbitration, various disputes over Subcontractor's entitlement to compensation as a result of Owner acts and omissions (including, but not limited to, acceleration, delays, maladministration, design problems and changes, the untimely issuance of, response to and administrative processing of multiple Requests for Information, Proposed Change Orders and/or Construction Change Directives, and the cumulative impact effect of the foregoing) that occurred between the start of Work on the Subcontract and __________, 20___. The foregoing actual and estimated cost claims (collectively referred to herein as the "Subcontractor Claims," attached hereto as Schedule “A,”) constitute all of Subcontractor's claims related to or arising from the Project except as set forth in the paragraph immediately below; and

WHEREAS ______ filed an arbitration demand against the Owner wherein _____ seeks, among other enumerated items, $______ in costs related to changes in _____ design which costs constitute direct losses incurred by Subcontractor.

WHEREAS, Subcontractor wishes to prosecute its Subcontractor Claims as set forth in Schedule “A”, pursuant to Subcontract Articles ___________, and _____ wishes to pass on such Subcontractor Claims and assert them against the Owner pursuant to _____’s Contract with Owner; and

WHEREAS, in accordance with and subject to the Subcontract, ____ is willing to prosecute the Subcontractor Claims for and on behalf of Subcontractor and to pass the Subcontractor Claims through to Owner pursuant to the Contract; and
WHEREAS, Subcontractor is willing to reduce the amount of its [lien] claim pending in Case No. _______ by the amount of $______.

NOW, THEREFORE, for valuable consideration, _____ and the Subcontractor agree as follows:

1. **Subcontractor Warranty.** Subcontractor reaffirms all of the terms of the Subcontract. Subcontractor hereby warrants to _____ that Subcontractor has paid and/or will pay all valid claims by laborers, materialmen, equipment lessors and subcontractors employed by it who have performed work, supplied materials, or leased equipment or for which Subcontractor otherwise has incurred obligations under the Subcontract and for which ______ has paid Subcontractor, and Subcontractor agrees to defend, indemnify and hold _____ harmless from the payment of such obligations and any damages arising directly out of the nonpayment of such obligations. Notwithstanding anything to the contrary in this paragraph, Subcontractor reserves the right to include any claims of its subcontractors and/or suppliers in the Subcontractor Claims. Subcontractor represents and warrants to ______ that the Subcontractor Claims constitute all of Subcontractor's claims related to or arising from the Project.

2. **Subcontractor Release.** Other than as specifically excepted below, Subcontractor hereby releases _____, its Surety and the payment and performance bonds for the Project from any and all liens and claims, known or unknown, whether arising out of tort, contract or otherwise, or of whatsoever nature, which Subcontractor had, has or may have against _____ and its Surety arising out of or under or relating in any way to the Subcontract, the Subcontractor Claims or the Project.

   2.1 Subcontractor does not release _____ from the [Mechanics Lien action] filed in its Complaint to [Foreclose Mechanics Lien on a Public Improvement, for an Accounting, and Other Relief in the Circuit Court of] ______, _______ Division, Case No_______.

   2.2 Subcontractor does not release ______ from the payment of any money to be paid or paid and received from or on behalf of Owner or any other source other than ______ for or on account of the Subcontractor Claims. _____ and Subcontractor stipulate and agree that, to the extent that Subcontractor suffered damages and harm as a result of Owner's actions or inactions, ______ is liable to Subcontractor for its damages and costs but only as, when, and to the extent _____ receives payment from Owner for Subcontractor's damages and costs.

2.3. Subject to the provisions herein, Subcontractor agrees to accept in full satisfaction and discharge of Subcontractor's Claims the amount, if any, collected from the Owner on Subcontractor's account, which amount is to be paid in liquidation thereof as herein provided, unless within seven (7) days after receipt of such determination, it notifies ______ of its disagreement. In such a case, the disagreement shall be settled by submitting the dispute to arbitration to be decided under the then applicable Construction Rules of the American Arbitration Association.
2.3. It is the intent of the Parties to provide for the full liquidation of the Subcontractor Claims and not to release the Owner for liability for any portion of the Subcontractor Claims.

2.4. This Agreement and this release shall be deemed to be invalid, void and of no force or effect in the event any determination is made that any release contained herein results in a release of Owner from liability for the Subcontractor Claims.

2.5. Subcontractor does not release _____ from claims arising subsequent to execution hereof or that are not known or reasonably discoverable at the time of execution of this Agreement.

3. Release. _____ hereby agrees to release Subcontractor from any and all liens and claims, whether arising out of tort, contract or otherwise, or of whatsoever nature, that _____ has or may have against Subcontractor arising out of or under or relating in any way to the performance of the Subcontract, except:

3.1. _____ does not release Subcontractor from any obligations under the Subcontract regarding Work thereunder that has not been performed as of the effective date hereof. Except as otherwise expressly modified herein, all terms and conditions of the Subcontract, and defenses thereunder, shall remain in full force and effect.

3.2. _____ does not release Subcontractor for claims for warranty work, defects or past or future bodily injury, property damages or indemnity claims, or claims by other subcontractors on the Project relating to or arising out of Subcontractor's work, or any such claims arising subsequent to execution hereof or that are not known or reasonably discoverable at the time of execution of this Agreement.

3.3. _____ does not release Subcontractor for any potential liability for the alleged counterclaims that have been or may be asserted by Owner to the extent they result in an offset of sums paid or to be paid, and such counterclaims are in fact proven to be the responsibility of Subcontractor.

4. Claim Preparation, Review and Presentation. _____ agrees to prosecute the Subcontractor Claims for and on behalf of Subcontractor and to pass the Subcontractor Claims through to Owner, subject to the provisions of the Contract, the Subcontract, and applicable state and federal laws. Subcontractor agrees to cooperate and assist _____ and counsel of _____’s choice, in preparing and presenting such claims. It is further agreed that, upon request and except for attorney-client work product, communications and documents, _____ will provide Subcontractor with complete copies of all claim submittals and all correspondence or other writings related to the prosecution and disposition of the Subcontractor Claims.

[4.1. It is agreed that Subcontractor will be responsible for the preparation and prosecution of the Subcontractor Claims and that, subject to the claims certification provisions of the Contract, _____ shall pass through Subcontractor Claims to the Owner.]
4.2. Subcontractor shall further be responsible for defense of any counterclaims and setoffs attributable to it, whether in negotiation, arbitration or litigation, Subcontractor shall bear all the expenses associated with preparing and prosecuting the Subcontractor Claims and with the defense of any counterclaims and setoffs attributable to them. _____ specifically agrees to advise Subcontractor of all meetings with Owner at which the Subcontractor Claims and setoffs or counterclaims attributable to Subcontractor will be discussed and to permit Subcontractor to attend and participate in such meetings to the extent the Owner so agrees. Subcontractor shall have the sole authority to accept, counteroffer or reject any settlement offers regarding its own specific claims.

4.3. At its own expense, Subcontractor shall fully cooperate with _____ and its attorneys in the investigation, evaluation, and/or prosecution (including appeals) of the Subcontractor Claims. [OR: The Parties shall fully cooperate with each other in the investigation, evaluation, and/or prosecution (including appeals) of the Subcontractor Claims]. By way of example, and without limitation, Subcontractor shall cooperate with _____ by doing or performing the following:

i. Witnesses and Records. Making available any and all witnesses and/or records as may be requested by ____ from time to time for ____’s investigation, evaluation, and/or prosecution of the Subcontractor Claims;

ii. Documentation. Providing all documentation necessary for ____’s investigation, evaluation, and/or prosecution of the Subcontractor Claims;

iii. Arbitration Proceeding. Making available upon ____’s request any and all employees, agents, officers, directors, or any other individuals associated or affiliated with Subcontractor which may be needed from time to time for the arbitration related to ____’s prosecution of the Subcontractor Claims. Arbitration Proceedings include, but are not limited to, the following: witness depositions and witness deposition preparation; witness testimony at trial and witness arbitration hearing preparation; attendance at arbitration proceedings; attendance at hearings, to the extent requested by ____; and any and all other legal proceedings related to discovery, testimony, or other appearances where cooperation from Subcontractor is requested by ____.

4.4. Subcontractor shall have the sole authority to accept or reject any settlement offers from Owner regarding its own specific claims.

4.5. In the event the award or judgment makes a specific award upon the Subcontractor Claims, as set forth in Schedule A, _____ shall pay Subcontractor the amount so awarded less __________ Percent of the amount of Subcontractor’s claims or any portion thereof as fixed in any decision, compromise, or settlement, whether before or after suit is commenced, wherein the amount payable on account of Subcontractor’s claim is fixed and determined, separate and distinct, apart from the amounts payable on account of all other claims. _____ shall do so within thirty (30) days of receipt of payment unless there is an appeal by either party.
5. **Modification of Agreement and Addition of New Parties.** This Agreement may be modified if such modifications are in writing and are signed by each of the parties having executed this Agreement. Addition of other parties as signatories to this Agreement requires that all parties execute a new Agreement.

6. **Each Client Understands They Are Represented by Their Own Attorney Only.** Each client-signatory understands and acknowledges that the client is represented exclusively by the client's own attorney(s) in this matter. While attorneys representing other client-signatories to this Agreement have a duty to preserve the confidences disclosed to them pursuant to this Agreement, they will not act for any party other than their own clients. In other words, each client understands and agrees that this Agreement itself does not and will not create any attorney-client relationship with any other client-signatory's attorney(s). Each client-signatory expressly acknowledges that attorneys representing other client-signatories to this Agreement owe an uncompromising duty of loyalty to their own, respective client and to no other party.

7. **Agreement Not to Use Exchanged Information.** Each Party agrees that it will not use any privileged information exchanged or obtained by such signatory pursuant to this Agreement in any proceeding brought by one signatory against the other or wherein the respective interests of the signatories are different from, inconsistent with, or adverse to one another. The Parties and the undersigned counsel further agree that no privileged information obtained or exchanged by the signatories hereto shall be admissible in any proceeding brought by one signatory against the other or wherein the respective interests of the signatories are different from, inconsistent with, or adverse to one another. "Privileged information" means information that would not be subject to discovery, disclosure or admissibility but for this agreement and the exchanges pursuant hereto, as well as other recognized privileges and immunities including attorney work product and attorney-client.

8. **Joint Defense and Common Interest.**

8.1. In connection with the Parties' efforts concerning this Agreement and any related proceedings, the Parties have concluded that facts known to each Party may assist the Parties jointly in the preparation of the Subcontractor Claims and in the joint defense against any claim or other cause of action asserted by the Owner. The Parties therefore acknowledge and agree that they share certain common interests and that then Interests will be and have been best served by the exchange and sharing of information subject to the continued protection of the attorney-client privilege, work product privilege, trade secret privilege, joint prosecution privilege, joint defense privilege, common interest privilege or by any other applicable privileges and/or protective doctrines.

8.2. To further their own common interests, the Parties may exchange information protected by the attorney-client privilege, the work product privilege, trade secret privilege, joint prosecution privilege, joint defense privilege, common interest privilege, or by any other applicable privilege or protective doctrine - both orally and in documents including factual analysis, mental impressions, legal memoranda, reports of witness interviews, draft briefs and pleadings, and other information (collectively, "Common Interest Materials").
8.3. The Parties agree that they shall cooperate with each other reasonably and to the extent permitted by law pursuant to the "Joint Defense Doctrine" or "Common Interest Doctrine," as recognized in United States v. McPartlin, 595 F.2d 1321, 1336 37 (7th Cir.), cert. denied, 444 US. 833, 100 S. Ct. 65 (1979); Hunydee v. United States, 355 F.2d 183 (9th Cir. 1965); Continental Oil Company v. United States, 330 F.2d 347 (9th Cir. 1964), or other similar doctrine to the fullest extent applicable in any jurisdiction or forum. The Parties agree that the Common Interest Materials will be protected from disclosure by the attorney-client privilege, work product privilege, trade secret privilege, joint prosecution privilege, joint defense privilege, common interest privilege, or other applicable privileges, even if such materials are exchanged between or among counsel and the Parties.

9. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement, nor do the Parties intend to benefit any third parties.

10. **Substitution of Parties or Attorneys.** This Agreement shall automatically apply to substitute or associated counsel who may appear on behalf of any client-signatory. This Agreement shall not be subject to abrogation by any heir, assign or other successor in interest to any party hereto. Nor shall such heir, assign or successor in interest waive any privilege or doctrine with regard to information shared by or among the parties to this Agreement.

11. **Potential Conflict Waived.** No signatory withdrawing from this Agreement shall claim or assert or support a contention that counsel for remaining client-signatories have a conflict of interest in their continued representation of their respective clients. Nor shall a withdrawn signatory object to continued representation of the remaining client-signatories by their respective counsel. Nothing contained in this Agreement shall be used by any signatory as a basis for seeking to disqualify any attorney from representing their client in connection with the Project, the Litigation, or any related proceedings. No attorney-signatory shall be prevented, because of participation in this Agreement, from examining or cross-examining any signatory who testifies in any proceeding arising out of the Project.

12. **Entire Agreement.** With respect to the subjects hereof, this Agreement supersedes and takes precedence over all other prior agreements between the parties, whether written or oral, but this Agreement supersedes and takes precedence over the Subcontract only to the extent that any provision of this Agreement conflicts with or is inconsistent with the terms of the Subcontract.

13. **Governing Law.** Should any dispute arise hereunder, this Agreement shall be governed by and interpreted pursuant to the laws of the State of Illinois.

14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute a single document.
IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first appearing above. 

[CONTRACTOR]  
Dated:_______________  
By:__________________  
Its:__________________

[SUBCONTRACTOR]  
Dated:_______________  
By:__________________  
Its:__________________