

**GENERAL CONDITIONS AND SPECIFICATIONS FOR SUBCONTRACT AGREEMENT**

This Agreement, dated \_\_\_\_\_, 200\_\_\_\_ is made between the general contractor and the subcontractor for consideration hereinafter named.

DATE OF CONTRACT:

GENERAL CONTRACTOR: Boiler Equipment, Inc.  
65 Tosca Drive  
Stoughton, MA 02072  
(Hereinafter referred to as "Contractor")

SUBCONTRACTOR:

(Hereinafter referred to as "Subcontractor")

**ARTICLE I**

1. For any and all work and/or jobs performed by Subcontractor on behalf of Contractor for the year 2007, the following general conditions and specifications shall apply and be in full force and effect for all work and/or each job performed by Subcontractor on behalf of Contractor regardless of whether said general conditions and specifications are specifically referred to in any and all estimates, invoices and/or payments as a result of specific work and/or jobs performed by subcontractor.

**ARTICLE II**

1. Receipt of payments by the contractor from the owner with respect to the work shall be, in each instance, a condition precedent to the subcontractor's right to receive his share of any such payment from the contractor.

2. As a condition precedent to final payment, contractor shall require the subcontractor to provide evidence (including Release) that all payroll, material, equipment, subcontractors and suppliers have been paid in full for work on the project.

3. Contractor may decline to approve any request for payment, and it may rescind in whole or in part any previous approvals made to such extent as may be necessary in its opinion because of: 1) defective work not remedied; 2) third party claims filed or reasonable evidence indicating a probability of the filing of such claims; 3) failure of subcontractor to make payments properly to its sub-subcontractors, or to make payments for labor, materials or equipment; 4) reasonable evidence that the work will not be completed within the contract time, or; 5) persistent failure to carry out the Work in accordance with the Contract documents.

4. Notwithstanding anything to the contrary contained in this Agreement, subcontractor agrees and understands that its acceptance of this subcontract and its negotiation of the subcontract price is an acknowledgment that it has received adequate consideration for its risk, that, with regard to subcontractor's work, payment to the Contractor by the Owner is a condition precedent to payment to the subcontractor, that subcontractor will be paid out of said monies, the sole source of which is Owner's payment to Contractor, and therefore, Subcontractor bears a risk of Owner's insolvency or other non-payment.

ARTICLE III

1. Subcontractor agrees to perform the work and administer its obligations under the contract documents and further agrees:

- A. To be bound to the Contractor by the terms of the Agreement, General Conditions, Drawings, and specifications and to assume to him all the obligations and responsibilities that he, by those documents, assumes towards the Owner.
- B. To use only competent labor in connection with this Contract.
- C. To pay for all permits, fees, and taxes (including sales tax) and fines caused by your operations in connection with the Subcontract.
- D. That all changes or modifications to this Contract must be in writing and signed by an Officer of Contractor. Work performed without complying to this provision will be done at the sole expense of the Subcontractor.
- E. To clean and remove from the premises all rubbish and debris resulting from this Contract on a daily basis.
- F. All material and labor must meet with the complete satisfaction of the Owner and Contractor.
- G. That all work and operations performed under this Contract shall be done in a diligent, good, and workmanlike manner free from all defects both latent and otherwise and fit for its intended use. Final payment shall not relieve the Subcontractor of responsibility for negligence of faulty materials or workmanship, and upon notice, shall remedy any defects due thereto and pay all expenses for any damage to other work resulting therefrom.
- H. That all work of the Subcontractor shall comply with local, State and Federal codes and regulations. Penalties imposed upon the Contractor or Owner due to negligent acts of the Subcontractor will be paid by the Subcontractor.
- I. That prior to Subcontractors hiring and/or retaining of sub-subcontractors to perform the work under this Contract, Subcontractor must first obtain approval in writing from the Contractor and such sub-subcontractor must agree to be bound by the terms of this Contract in the performance of the work.

#### ARTICLE IV

1. Subcontractor shall at all times during this Agreement and any extension or continuation thereof, at its sole cost and expense, obtain and maintain the following policies of insurance, and such policies of insurance shall name Contractor, Owner and their respective directors, partners, members, employees, agents and assigns as additional primary insureds:

(a) Commercial General Liability Insurance: Comprehensive general liability insurance, in broad form, including coverage for completed operations and liability assumed by contract. The policy limits shall be not less than \$1,000,000 for each occurrence and in the aggregate for bodily injury and \$1,000,000 for each occurrence and in the aggregate for property damage. The Certificate of Insurance and the Policy of Insurance will designate Contractor, Owner, their agents, servants and employees as additional insureds arising out of subcontractor's work and/or operations on the project, and will provide that the insurance of the subcontractor is primary. The Certificate will provide that the policy may not be canceled or modified without 30 days prior written notice to Owner and Contractor.

(b) Automobile Liability: Automobile Liability in comprehensive form including insurance for owned, non-owned, and hired automobiles, trucks and other licensed motor vehicles utilized by Subcontractor in connection with the work. The policy limits will not be less than \$1,000,000 for bodily injury and \$1,000,000 for property damage. The Certificate of Insurance will provide that the insurance may not be canceled or modified without 30 days prior written notice to Contractor and Owner.

(c) Workers' Compensation Insurance: Workers' Compensation Insurance shall be in statutory form. The Certificate of Insurance will provide that the insurance may not be canceled without 30 days prior written notice to Contractor and Owner.

2. Waiver of Subrogation:

Subcontractor waives all rights against Contractor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, automobile liability or workers' compensation insurance maintained pursuant to Paragraph 1(a)-(c) of Article V herein.

Subcontractor shall bear the risk of loss or damage from any cause whatsoever to machinery, tools, equipment, building supplies or materials, temporary structures and any equipment of like nature used or to be used by Subcontractor, its agents, suppliers and/or sub-subcontractors, or its or their employees in the performance of the Subcontract.

Subcontractor waives and releases all rights against Contractor for damages caused by fire or other perils to the extent covered by property insurance upon the Work, except such rights they may have to the proceeds of such insurance. In the event of a loss, Subcontractor shall be bound by any adjustment which shall be made between Contractor or the Owner and the insurance company or companies. Loss, if any, shall be made payable to Contractor and/or Owner, as their interests may appear, for the account of whom it may concern.

ARTICLE V

1. To the fullest extent permitted by law, Subcontractor and its subcontractors agrees to defend and indemnify Contractor, Owner, their respective agents, servants, and employees and save them harmless from all claims, liability, loss, damage and expense, including attorney's fees, arising out of or resulting from the subcontractor's performance of work associated with this contract, provided that any such claim, damage, loss or expense is (1) attributable to bodily injury, sickness, disease or death or to injury or destruction of tangible property including the loss of use resulting therefrom, and, (2) is caused in whole or in part by the negligent act or omission of Subcontractor, its agents, employees, or subcontractors or any other person directly or indirectly employed by the Subcontractor or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation hereunder shall not be limited by the provision of any Workers Compensation act or statute.

ARTICLE VI

1. Contractor and Subcontractor hereby agree and understand that any claim, controversy or dispute between Contractor and Subcontractor involving the work and/or operations to be performed under this Contract is required to be submitted to the Boston Office of the American Arbitration Association for resolution and judgment upon any such award may be entered in the Courts of the Commonwealth of Massachusetts.

2. In the event that any dispute or claim between the parties involving the performance of work under this contract shall proceed through arbitration and/or a lawsuit, the prevailing party shall be entitled to the recovery and collection of its attorneys fees and costs associated therewith.

3. This agreement shall be governed by the laws of the Commonwealth of Massachusetts and is intended to be a contract under seal.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this

\_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_

BOILER EQUIPMENT, INC.

By:

By: