



**SUBCONTRACTOR AGREEMENT**

THIS AGREEMENT (the "Agreement"), made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, (the "Effective Date") by and between the Contractor,

**Sherute LLC  
4 Black Forest Road  
Hamilton, NJ08690**

and the Subcontractor,

Pursuant to a contract for construction with the Owner:

\_\_\_\_\_

For the following Project:

**Providing and installing \_\_\_\_\_ at \_\_\_\_\_**

The Architect for the Project being:

**Architect Name  
Architect Address**

WHEREIN, the Contractor and the Subcontractor, for the consideration hereinafter named, agree as follows:

ARTICLE 1: Documents. The Subcontract Documents shall consist of this Agreement and the Proposal presented to the Contractor by the Subcontractor dated \_\_\_\_\_, and attached as **Exhibit A**. Any and all changes to the Documents shall be in writing. Should there be any discrepancies between the Proposal and this Agreement, this Agreement shall prevail.

ARTICLE 2: Contract Sum and Work to be Performed. Subcontractor agrees to furnish all materials, labor, equipment and services necessary to complete the Project in accordance with the Proposal (the "Work") for the amount of \_\_\_\_\_ **and** \_\_\_/100 **Dollars(\$ \_\_\_\_\_)** (the "Contract Sum").

ARTICLE 3: Date of Commencement and Substantial Completion. The Subcontractor agrees to commence the Work within Five (5) business days of receiving notification from the Contractor to commence work at site. The Subcontractor agrees that the Work shall be substantially completed \_\_\_\_\_, subject to extension only with written consent of Contractor. Subcontractor agrees to reimburse Contractor for any and all damages sustained by the Contractor due to Subcontractor's inability to comply with the date above. Subcontractor agrees and understands that time is of the essence. The Subcontractor shall immediately advise Contractor of any change field conditions, delay, conflict, interference, safety hazard or injury to any person. If the Subcontractor is delayed due to fire or other casualty through no fault of Subcontractor, this date shall be extended as appropriate. The Subcontractor shall cooperate with Contractor in scheduling work to avoid conflict, delay or interference with the work of the Contractor or other subcontractors.

ARTICLE 4: Change Orders. All extras or variations must be agreed to by the Contractor and Subcontractor in Writing as a Change Order attached as **Exhibit B**. The Change Order must include any changes in date of substantial completion or price that will occur based on the change, and shall be broken down into sufficient detail to identify labor, materials, equipment, overhead and profit, which shall be limited to 10% and 5% respectively.

ARTICLE 5: Assignment. No assignment of this Contract agreement is permitted.

ARTICLE 6: Insurance. Subcontractor agrees to obtain and pay for the following insurance coverage in the amounts required by law, issued by a company authorized to do business in the State of New Jersey, unless specifically waived herein. In the event of cancellation of any such coverage, the Subcontractor shall immediately notify Contractor of such cancellation. Subcontractor shall provide certificates of insurance prior to commencement of the Work. Specifically, Subcontractor shall provide:

- a) Workman's Compensation as required by Law, covering all employees on or off the work site acting within the course and scope of their employment, or a certificate of exemption from such requirements; and
- b) Liability in the amount of \$1M for each occurrence and \$2M the aggregate, with proof of description of type of business and Subcontractor, with Contractor and Owner named as additional insureds; and
- c) Business auto insurance in the amount of \$1M for any vehicles utilized for this project.

ARTICLE 7: Progress Payments. Provided application for payment is received by the Contractor not later than the 25<sup>th</sup> of each month, the Contractor shall apply to the Owner for payment for completed Work. As long as the Work has been satisfactorily performed as reasonably determined by Contractor, the amount due is payable to the Subcontractor by the 30<sup>th</sup> of the following month. Any adjustments by Contractor and/or

Owner will be brought to the attention and discussed with the Subcontractor before being finalized. In the event that Contractor and Subcontractor do not agree on the adjustment, Subcontractor is to continue Work on the Project. The Subcontractor is entitled to invoice for materials purchased and stored off site, providing documentation is submitted to verify material value and evidence of insurance at offsite storage location. The invoice format shall be the AIA G702 and AIA G703 Document attached at **Exhibit C**. The Contractor reserves the right to accelerate payments based on discounts for early payments or work to be performed ahead of schedule, both as negotiated with Subcontractor.

ARTICLE 8: Retainage. Payments shall be subject to 10% retainage until 50% completion, after which time retainage shall be reduced to 5%. Application for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the period covered by the application. The final 5% shall be released upon completion of punch list, all required closeout documentation, training of Owner and/or Contractor, and submission of lien waivers attached as **Exhibit D**.

ARTICLE 9: Supervision. The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other Subcontractors, or Contractor's own forces. The Subcontractor shall take necessary precautions to protect properly the Work of others from damage caused by operations under this Agreement. The Subcontractor shall advise the Contractor of potential conflicts between the Work of the Subcontractor and that of others.

ARTICLE 10: Communications. The Subcontractor shall not communicate with the Owner without the presence of the Contractor. Any disputes with organized labor in regard to the Work are the sole responsibility of the Subcontractor.

ARTICLE 11: Permits, Fees, Notices, and Compliance with Laws. The Subcontractor shall give notices, obtain permits, and comply with all applicable laws.

ARTICLE 12: Performance. The Contractor and the Subcontractor for themselves, their successors, executors, administrators and heirs, hereby agree to the full performance of the covenants herein contained.

ARTICLE 13: Contractor's Remedies. If the Subcontractor defaults in its obligations hereunder and fails within five (5) working days after receipt of written notice from Contractor, to remedy the default, Contractor may exercise the following remedial actions, in addition to all other remedial actions authorized by law. A default may include incorrect or improper activities or inaction by Subcontractor. In no instance shall remedial action taken by the Contractor relieve Subcontractor's full responsibility under this Agreement. The remedial actions may include the following:

- a) Withhold payment to Subcontractor until the necessary services or corrections in performance are satisfactorily completed;
- b) Request the removal from Work on the Agreement of employee(s) and/or agent(s) of Subcontractor whom the Contractor or designee justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the Projects/he deems to be contrary to the public interest or not in the best interest of Contractor;
- c) Deny payment or recover reimbursement for those services or deliverables that have not been performed and which, due to circumstances caused by Subcontractor, cannot be performed or if performed would be of no value to the Contractor. Denial of the amount of payment shall be reasonably related to the amount of work or deliverables lost to Contractor;
- d) Terminate this agreement upon written notice, or, if Contractor elects, Contractor may make good such deficiencies and deduct the cost thereof from the payment then or thereafter due the Contractor. If this Agreement is terminated due to Subcontractor's default, and Contractor finishes Subcontractor's work, then if the cost of finishing such work exceeds the amount remaining under this Agreement, the Subcontractor shall be liable for the difference.

ARTICLE 14. Termination by the Contractor. The Contractor may, at any time, terminate this Subcontract in whole or in part for the Contractor's convenience and without cause, by notice to the Subcontractor specifying the extent of termination and the effective date of termination. Upon receipt of said notice, Subcontractor shall terminate any existing subcontracts and purchase orders in connection with the Project. The Subcontractor shall recover as its sole remedy payment for the Work properly performed under this Agreement, and for all materials delivered and stored in accordance with the Contractor's instructions. The Subcontractor waives any claims for damage, including anticipated profits and consequential or special damages.

ARTICLE 15. Disputes. Any disagreements or disputes will be first attempted to be settled by mediation in accordance with the Construction Industry Mediation Rules as set forth by the American Arbitration Association, in advance of arbitration, legal, or equitable proceedings. All costs will be shared equally by the two parties. The mediation shall be held at the Contractor's office, unless mutually agreed to otherwise. Agreements made by such mediation shall be held enforceable as settlement agreements in any court having jurisdiction thereof. If the parties are unable to mediate a settlement, the parties shall proceed to the arbitration in accordance with the Construction Industry Arbitration Rules as set forth by the American Arbitration Association. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court of jurisdiction.

ARTICLE 16: Safety. The Subcontractor shall take reasonable safety precautions with respect to performance of this Agreement, shall comply with

safety measures initiated by the Contractor and with applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property. The Subcontractor shall report to the Contractor within 24 hours an injury to an employee or agent of the Subcontractor that occurs at the site.

ARTICLE 17: Site. The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Agreement and shall place all waste at the location and/or into the containers provided by Contractor. If the Subcontractor fails to clean up, the Contractor may charge the Subcontractor for cleanup costs. Subcontractor shall supply all required lifts, scaffolds or other specialized equipment necessary for the performance of their work. Sanitary facilities, parking areas, and smoking areas will be utilized as designated by Contractor. The use of alcohol or non-prescription drugs is strictly prohibited and may be grounds for immediate dismissal from Project.

ARTICLE 18: Warranty. The Subcontractor warrants to the Contractor that materials will be of good quality and new and that the Work and workmanship will be free from defects not inherent in the quality required or permitted for a period of one year following final completion. Subcontractor shall provide manufacturer's warranty in the name of the Owner. Subcontractor shall repair and replace any and all parts and materials and perform all labor as required to remedy such defects, and shall be responsible for any damages caused by such defects. Work not conforming to the requirements, including substitutions not properly approved and authorized, may be considered defective.

ARTICLE 19: Indemnification. To the fullest extent permitted by law, the Subcontractor shall Indemnify and hold harmless the Contractor, and agents and employees against claims, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless or whether or not such claims, damage, loss or expense is caused in part by a party indemnified here under.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto execute this Agreement:

CONTRACTOR:

Sherute, LLC

BY: \_\_\_\_\_  
Name: \_\_\_\_\_ (Date)  
Title:

SUBCONTRACTOR:

BY: \_\_\_\_\_  
Name: \_\_\_\_\_ (Date)  
Title: