

### **INDEMNITY PROVISIONS**

SUBCONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD CONTRACTOR HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, CLAIMS OR COST (INCLUDING REASONABLE ATTORNEY FEES, AND COSTS OF LITIGATION, INVESTIGATION AND/OR SETTLEMENT) FOR DAMAGES OR INJURIES TO CONTRACTOR'S PROPERTY AND EQUIPMENT CAUSED BY SUBCONTRACTOR OR SUBCONTRACTOR'S EMPLOYEES AND/OR BY ANY PERSON OR ENTITY CONTRACTED, RETAINED OR HIRED BY, OR ACTING FOR OR ON BEHALF OF SUBCONTRACTOR.

SUBCONTRACTOR SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND, AND HOLD CONTRACTOR, AND CONTRACTOR'S OFFICERS, EMPLOYEES, AGENTS AND INSURERS, AND BROOKLYN NAVY YARD DEVELOPMENT CORP., AND THE CITY OF NEW YORK, HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, LIABILITIES, DAMAGES, COSTS, LOSSES AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM OR RELATED TO ANY BODILY INJURY TO, OR SICKNESS OR DEATH OF, ANY PERSON, INCLUDING EMPLOYEES OF CONTRACTOR OR SUBCONTRACTOR OR THIRD PARTIES, OR DAMAGE TO PROPERTY OF WHATSOEVER NATURE, CAUSED BY, ARISING FROM OR IN CONNECTION WITH ANY WORK OR ACT RELATED TO THE WITHIN AGREEMENT, OR ANY PERFORMANCE THEREUNDER, **EXCEPT THAT SUBCONTRACTOR WILL NOT BE REQUIRED TO DEFEND, INDEMNIFY AND HOLD CONTRACTOR HARMLESS TO THE EXTENT THAT SUCH CLAIMS, DEMANDS, LIABILITIES, DAMAGES, COSTS, LOSSES AND EXPENSES ARE CAUSED BY THE NEGLIGENCE OR FAULT OF CONTRACTOR.** SHOULD ANY CLAIMS, DEMANDS, LIABILITIES, DAMAGES, COSTS, LOSSES AND EXPENSES RESULT OR ARISE FROM OR IN CONNECTION WITH ACTS OR OMISSIONS OF BOTH CONTRACTOR AND SUBCONTRACTOR, SUBCONTRACTOR SHALL BE REQUIRED TO DEFEND, INDEMNIFY AND HOLD CONTRACTOR HARMLESS TO THE FULL EXTENT THAT THE SAME RESULTS OR ARISES FROM THE FAULT OR NEGLIGENCE OF SUBCONTRACTOR, OR SUBCONTRACTOR'S OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUB-SUBCONTRACTORS AND/OR OTHER PERSONS OR ENTITIES ACTING UNDER CONTRACT WITH SUBCONTRACTOR.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE INDEMNITY, DEFENSE AND HOLD HARMLESS OBLIGATIONS CREATED HEREUNDER SHALL OPERATE NOTWITHSTANDING THE "GRAVE INJURY" PROVISIONS OF SECTION 11 OF THE NEW YORK WORKERS COMPENSATION LAW.

SUBCONTRACTOR HEREBY UNDERSTANDS AND AGREES THAT THE WITHIN INDEMNITY PROVISION IS AN ESSENTIAL INDUCEMENT TO CONTRACTOR'S AGREEMENT TO ENGAGE IN BUSINESS WITH SUBCONTRACTOR, AND SUBCONTRACTOR FURTHER UNDERSTANDS AND AGREES THAT ADEQUATE AND SATISFACTORY CONSIDERATION HAS BEEN GIVEN IN RETURN FOR THIS INDEMNITY PROVISION.

THE INDEMNITY, DEFENSE AND HOLD-HARMLESS OBLIGATIONS CREATED HEREBY SHALL SURVIVE THE TERMINATION OF THE AGREEMENT AND COMPLETION OF WORK THEREUNDER.

### **INSURANCE AND WAIVER OF SUBROGATION**

SUBCONTRACTOR SHALL OBTAIN AND KEEP IN FORCE INSURANCE SPECIFICALLY EXTENDING TO AND COVERING ANY INDEMNITY, DEFENSE AND HOLD-HARMLESS OBLIGATIONS OWED BY SUBCONTRACTOR TO CONTRACTOR, AND BROOKLYN NAVY YARD DEVELOPMENT CORP., AND THE CITY OF NEW YORK UNDER THIS AGREEMENT. ALL SUCH INSURANCE, EXCEPT WORKERS COMPENSATION SHALL NAME CONTRACTOR, AND BROOKLYN NAVY YARD DEVELOPMENT CORP., AND THE CITY OF NEW YORK AS ADDITIONAL NAMED ASSUREDS, AND SHALL INCLUDE A WAIVER OF INSURERS' RIGHTS OF SUBROGATION AGAINST CONTRACTOR, AND BROOKLYN NAVY YARD DEVELOPMENT CORP., AND THE CITY OF NEW YORK. ALL INSURANCE REQUIRED HEREBY SHALL BE CONSIDERED PRIMARY, AND NOT CONTRIBUTORY, WITH RESPECT TO OTHER INSURANCE.

SUBCONTRACTOR, UPON REQUEST FROM CONTRACTOR, SHALL PROMPTLY FURNISH CONTRACTOR WITH WRITTEN PROOF OF THE EXISTENCE, TERMS AND CONDITIONS OF ANY INSURANCE WHICH SUBCONTRACTOR IS REQUIRED TO OBTAIN HEREUNDER.

SUBCONTRACTOR SHALL ENSURE THAT, IN ALL ITS SUB-SUBCONTRACTS, EACH SUB-SUBCONTRACTOR IS EXPRESSLY REQUIRED TO INDEMNIFY, DEFEND AND HOLD CONTRACTOR, AND BROOKLYN NAVY YARD DEVELOPMENT CORP., AND THE CITY OF NEW YORK HARMLESS TO THE SAME EXTENT AS REQUIRED OF SUBCONTRACTOR BY THE WITHIN AGREEMENT.

**BORROWED SERVANTS/SPECIAL EMPLOYEES**

IT IS HEREBY UNDERSTOOD AND AGREED THAT, IN THE EVENT SUBCONTRACTOR IS HIRED, SUBCONTRACTED OR REQUESTED TO PROVIDE LABORERS TO CONTRACTOR, ALL SUCH LABORERS SHALL BE "BORROWED SERVANTS" AND "SPECIAL EMPLOYEES" OF CONTRACTOR FOR ALL PURPOSES, REGARDLESS OF BY WHOM SUCH LABORERS' WAGES ARE PAID.

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**SUBCONTRACTOR NAME**

\_\_\_\_\_  
**SUBCONTRACTOR REPRESENTATIVE SIGNATURE**

**PRINT NAME:** \_\_\_\_\_

\_\_\_\_\_  
**DATE**

**GMD Shipyard Corp. / Contractor (Page 2 of 2) Indemnity Provisions**  
**Please sign and return this page**

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<sup>i</sup> Revised form dated 12/1/09