



SUBCONTRACT AGREEMENT

Date: Click to enter a date.

Project: Click to enter text.

Location: Click to enter text.

Cost Code: Click to enter text.

Subcontractor: Click to enter text.

Click to enter text.

Contractor: Seagate Capital Construction LLC

5090 PGA Blvd, Ste 304

Palm Beach Gardens, FL 33418

Contact: Click to enter text.

Contact: Click to enter text.

Email: Click to enter text.

Email: Click to enter text.

Phone: Click to enter text.

Phone: 561-623-1046

SCOPE OF WORK	
Click to enter text.	
Contract Amount (\$)	Click to enter text.

SECTION 1. GENERAL PROVISIONS

1.1 The Subcontract Documents consist of (1) the Subcontract Agreement; (2) these General Conditions of Subcontract; (3) Scope of Work; and (4) modifications to the Subcontract Documents issued after execution of the Subcontract Agreement. These Subcontract Documents form the Subcontract, and are as fully a part of the Subcontract as if attached to the Subcontract Agreement.

1.2 Anything mentioned in the specifications and not shown on the plans or drawings, or shown on the plans and drawings and not mentioned in the specifications, shall be deemed shown and mentioned in both. In the event of conflict or variance between any of the Subcontract Documents, the order of precedence shall be as follows:

(.1) written modifications to any of the Subcontract Documents issued subsequent to the execution of the Subcontract Agreement;

(.2) any Supplementary Conditions of Subcontract;

(.3) the General Conditions of Subcontract;

(.4) the Subcontract Agreement

1.3 Subcontractor certifies that it has carefully examined the Subcontract Documents and is fully familiar with all of the terms and conditions thereof and has fully acquainted itself with job site conditions, that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the work and that it is not relying on any opinions or representations of Contractor; and, as between the parties hereto, Subcontractor will assume full and complete responsibility for all conditions relating to the work, the site and its surroundings, governmental departments jurisdictions and all risks in connection therewith.

1.4 If any provision of this Subcontract, or any part thereof, shall at any time be held to be invalid or unlawful in whole or in part under any applicable federal or state law, ruling or regulation, then such provision shall remain in effect only to the extent permitted, and the remaining provisions shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

1.5 Waiver by Contractor of any breach of any provision of this Subcontract by Subcontractor shall not constitute a waiver of any other or future breach of the same or any other provision hereof. No waiver by Contractor of any provision of this Subcontract shall be effective unless provided for in an express, specific writing.

1.6 Subject to the provisions regarding assignments, the terms and conditions hereof shall inure to and be binding upon the parties hereto, their successors, assigns, executors, administrators and legal representatives. Wherever herein used, the singular shall include the plural and the neuter gender shall include the masculine and feminine.

1.7 This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, proposals, stipulations, or agreements, either written or oral. All prior or contemporaneous agreements to be included in this Subcontract are expressly identified herein. No agent or representative of either party has authority to make, and the parties shall not be bound by nor liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments or modifications to the terms of this Subcontract shall be valid unless reduced to writing and signed by both parties.

SECTION 2. PAYMENT SCHEDULE

2.1 From progress payments received by Contractor from Owner under the Prime Contract, Contractor shall, within ten (10) days after Contractor receives any such payment, pay to Subcontractor an amount equal to ninety percent (90%) of the amount which Owner's estimate shows has been earned by Subcontractor on account of work done hereunder during the period covered by it and for which Contractor has received payment.

2.2 Final payment to Subcontractor shall be made not less than thirty (30) days after final completion and acceptance of the entire work in writing by the Owner, Architect/Engineer and Contractor, with funds received by Contractor from Owner in final payment for work under the Prime Contract. The acceptance by Subcontractor of final payment hereunder shall constitute a final unconditional release by Subcontractor in favor of Contractor and its surety of all claims against Contractor and its surety arising under or by virtue of this Subcontract, except those claims previously submitted in writing by Subcontractor. No payment to Subcontractor shall operate as approval or acceptance of defective workmanship or materials. The estimates of Owner, or of Contractor if Owner makes no separate estimate, as to the amount of work done by Subcontractor shall be final and binding on Subcontractor. In the event of any overpayments, Subcontractor shall reimburse Contractor for any such overpayments after final quantities have been determined by Contractor or Owner or Contractor may retain for its use current and future payments in an amount equal to the overpayment.

2.3 Contractor is not required to make any payment/s to Subcontractor unless Subcontractor shall previously have provided an unconditional release/s executed by all persons who might have mechanic's lien, stop notice or labor and material bond rights against the project arising out of work performed under the Subcontract, using Contractor's forms. In the event Subcontractor provides conditional releases from any of those persons identified above, Contractor may, at its discretion issue a joint check for the amount(s) indicated in such conditional release. Subcontractor shall provide, as a required condition precedent to final payment, a full and final unconditional lien waiver/s and unconditional release/s from those materialmen and subcontractors claiming through Subcontractor.

2.4 The Contractor's actual receipt of each progress payment, final payment or other payment from the Owner shall be a condition precedent to any obligation of Contractor to make any progress payment, final payment of any other payment to Subcontractor, or to pay for extra or changed work or any claim for additional compensation or damages claimed by reason of acts or omissions of Owner.

2.5 Contractor may, at its discretion, pay all or any part of the Subcontract Price in a greater amount or at an earlier time than otherwise specified herein, either as an advance or otherwise, in which event, all other terms and conditions and any bonds furnished hereunder shall be unaffected thereby and shall remain in full force and effect.

2.6 Payments otherwise payable hereunder may be withheld in whole or in part by Contractor on account of: (1) defective materials or work not remedied, missing materials not furnished or cleanup not performed; (2) claims filed or reasonable evidence indicating probable filing of claims by unpaid suppliers of labor, materials or equipment to Subcontractor; (3) failure of Subcontractor to make payments properly to its subcontractors, or for labor, materials or equipment, transportation, storage or shipping costs, taxes, fees or other claims arising out of Subcontractor's work; (4) reasonable doubt that Subcontractor can complete the scope of work to be performed within the time required or for the balance of the Subcontract Price then unpaid; (5) damage to another Subcontractor, Owner and/or Contractor; (6) unsatisfactory prosecution of the work by the Subcontractor; (7) failure to deliver any required "as-built" drawings, operation or maintenance manuals, written guarantees or warranties; (8) failure to obtain the approvals required by any authority having jurisdiction over Subcontractor's work; (9) failure to provide certificates or other evidence of insurance or Subcontract bonds acceptable to Contractor; or (10) failure of Subcontractor to cure any default or to perform in accordance with this Agreement. If the foregoing conditions are removed to Contractor's satisfaction, the withheld payments shall promptly be made in accordance with all other terms and provisions herein. If such conditions are not so removed, Contractor may on forty-eight (48) hours' notice to Subcontractor take such steps as in its judgment may be required to rectify the same and all costs and

expenses incurred by Contractor therefor shall be paid by Subcontractor or be credited against payments otherwise payable to Subcontractor.

2.7 Subcontractor hereby agrees that all invoices to be considered for payment for a designated monthly pay period will be rendered no later than the day of the month designated by Contractor's representative, and in sufficient detail to enable processing. Invoices / pay apps received by Contractor after the designated date or containing incorrect percentages, percentages for unearned/performed work, insufficient detail or unapproved change order amounts received before the designated date will be considered as the next succeeding month's business and subject to payment as provided herein.

2.8 For Subcontract work performed on a Cost Plus and/or Time and Materials basis, Subcontractor shall submit time sheets for signature by the Contractor's representative, on a daily basis with substantiating invoices for any materials supplied. Subcontractor will be reimbursed at actual invoice costs for equipment and materials and actual labor rates plus 15%. The rate shall include any and all labor burden, including but not limited to, payroll taxes, city, state or federal taxes which may be owed by Subcontractor, insurance for health benefits, workers' compensation, general liability, equipment and installation risk (if required), excess umbrella and Subcontractor's profit. Invoices for materials shall include, but separately state the amount of, all applicable taxes, including sales and use taxes.

SECTION 3. TIME

3.1 Time is of the essence of this Agreement. The Subcontractor recognizes its responsibility to provide Contractor with timely and accurate schedule information for Subcontractor's work so that Contractor may develop a coordinated plan for the entire work. The Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of Subcontractor's work, both onsite and offsite, in a form acceptable to Contractor and attend coordination, safety and scheduling meetings as required by Contractor and be bound by the schedule(s) resulting from such meetings. Subcontractor's schedule shall include adequate time for and separately show the preparation and approval of shop drawings, samples, layout and product data as required by Section 21. Subcontractor shall commence work immediately upon being notified by Contractor, shall perform field work at such points as Contractor may from time to time designate, and shall conform to Contractor's progress schedule and detailed schedules and all revisions or changes made thereto. Subcontractor shall prosecute its work in a prompt and diligent manner and shall at all times furnish and have available sufficient and satisfactory equipment, materials, supplies and workmen to perform the work in accordance with Contractor's schedules without delaying or hindering Contractor's work or the work of other contractors or subcontractors.

3.2 Subcontractor shall coordinate the work covered by this Subcontract with that of all other contractors, subcontractors, and Contractor, in a manner that will facilitate the efficient and timely completion of the entire work. In the event Subcontractor fails to maintain its part of the Contractor's schedule, Subcontractor shall, without additional compensation, accelerate the work as Contractor may direct until Subcontractor's work is in accordance with such schedule including working overtime hours allowable by jurisdiction. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the work of Contractor, Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor on the premises. Should Subcontractor be delayed in the prosecution or completion of the work by the act, neglect or default of Owner, Architect/Engineer or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of Subcontractor, or in the event of a lock-out by Contractor, then the time herein fixed for the completion of the work may be extended the number of days that Subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within forty-eight (48) hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time allowed Contractor by Owner for such completion.

3.3 No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Contractor, including, but not limited to delays by other subcontractors or Owner, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor; provided, however, that in the event Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances and Contractor's determination as to Subcontractor's share of any award by Owner shall be binding and conclusive on Subcontractor. Subcontractor shall comply with and be bound by any notice provisions and claims procedure, including arbitration, contained in the Prime Contract or required by Owner. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorney's fees and expert fees, to the extent that said claim is made by Contractor at the request of Subcontractor.

3.4 Subcontractor, in the event of any dispute or controversy with Contractor, Owner or any other subcontractor over the scope of Subcontractor's work under the Subcontract Documents or over any other matter whatsoever, shall not cause any delay of cessation in or of Subcontractor's work or the work of any other subcontractor, but shall proceed under this Agreement to prosecute the work diligently to completion, the dispute to be submitted for resolution in accordance with Section 15 below.

SECTION 4. CHANGES IN THE WORK

4.1 Subcontractor shall make any and all changes in the work described in the Subcontract Documents as directed by the Contractor in writing. Such change or written direction shall not invalidate this Agreement.

4.2 If necessary, the Subcontract Price and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed work. Subcontractor shall supply Contractor with a written cost or credit proposal for such revised work along with all documentation necessary to substantiate the amount of the addition to or deduction from the subcontracted amount and time, if any. If Contractor and Subcontractor cannot agree on the amount of the addition or deduction, Subcontractor shall nonetheless perform the changed work upon Contractor's written order and submit, within seven (7) days of receipt of such order, written notice to Contractor of a claim for compensation or for additional time and further adjustment shall be agreed upon in writing by the parties hereto, but Subcontractor shall not suspend or delay proceeding with the changed work pending such agreement.

4.3 No claim for additional compensation, whether for extra labor or materials furnished, changes or otherwise, shall be allowed by Contractor in favor of Subcontractor unless within seven (7) days after such claim arises Subcontractor has given Contractor documentation to substantiate its claim.

4.4 If Owner shall order any changes or extra work, including additions, reductions or deletions in the work to be performed under this Subcontract and Contractor complies with Owner's order by issuing a similar order in writing to Subcontractor, Subcontractor will perform the work as required in such order, and any adjustment in compensation or in the time of performance shall be as the parties agree. If the parties are unable to agree, Subcontractor shall nevertheless proceed with such work and shall give prompt written notice of its claim for adjustment in compensation or in the time of performance. The amount of compensation and the time of performance shall be adjusted only to the extent allowed by the Owner; provided, however, that in the event Contractor obtains additional compensation from Owner on account of any changes or extra work ordered by the Owner, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances and Contractor's determination as to Subcontractor's share of any award by Owner shall be binding and conclusive on Subcontractor. Subcontractor shall comply with and be bound by any notice provisions and claims procedure, including arbitration, contained in the Prime Contract or required by Owner. In the event that Contractor prosecutes a claim against the Owner for an adjustment in compensation and time of performance for any changes or extra work, Subcontractor shall cooperate fully with Contractor in the

prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees and expert fees, to the extent that said claim is made by Contractor at the request of Subcontractor.

4.5 If any change or extra work is performed on a "Force Account" or other prescribed basis under the Prime Contract, Subcontractor shall be entitled to receive all payments made in reimbursement of its direct costs allowable under the Prime Contract and the allowable markup or margin thereon.

4.6 Subcontractor shall not make any changes in the work described in the Subcontract Documents or in any way cause or allow the work to deviate from the Subcontract Documents without written direction from Contractor. If Subcontractor makes any changes in the work described in the Subcontract Documents without written direction from Contractor, then such change constitutes an agreement by Subcontractor that it need not be paid for that changed work, even if it received verbal direction from Contractor or any form of direction, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages, and liability of any nature whatsoever associated with or in any way arising out of any such change it makes without written direction from Contractor.

4.7 No change, alteration, or modification to or deviation from any of the Subcontract Documents, whether made in the manner provided in this Section or not, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Subcontract, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

SECTION 5. DAMAGES CAUSED BY DELAYS

If Subcontractor should default in performance of the work described in the Subcontract Documents or should otherwise commit any act which causes delay to the Prime Contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default.

SECTION 6. LIENS

6.1 Subcontractor shall promptly pay or discharge in full or provide adequate security for the payment of all claims of any persons, firms or corporations furnishing or claiming to have furnished labor, materials, tools, equipment, or incidentals used in, upon, or for the work, whether or not as to any such claim a lien or right of enforcement is established or attempted to be established upon or against the work, the real property upon which the work is situated, upon any bond furnished by Contractor or upon any moneys payable to Contractor by Owner.

6.2 Further, in case suit on any such claims is brought, Subcontractor shall defend said suit at his own cost and expense, and will pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand, to cause the effect of any suit, lien or stop notice to be removed from the premises, and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said suit, stop notice or lien to be removed or dismissed and the cost thereof shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any lien or suit above described provided Subcontractor causes the effect thereof to be removed, promptly, in advance, from the premises and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or suits. Notwithstanding anything to the contrary set forth above in this Section, Subcontractor shall not be construed to have foregone its lien rights in the event of a dispute over payments due for services rendered and materials furnished to the Project.

6.3 Contractor reserves the right to make payment by joint check or by direct check to Subcontractor and Subcontractor's suppliers or subcontractors or any person having a right of action against Contractor, its surety or Owner under any law. Subcontractor shall furnish, if requested by Contractor, sworn affidavits from

time to time, in accordance with the form provided by Contractor, which shall state amounts due or to become due and amounts paid to suppliers and other parties contractually related with Subcontractor with respect to labor and materials furnished or to be furnished under this Subcontract.

6.4 Subcontractor agrees and covenants that monies received for performance under this Agreement shall be used solely for the benefit of persons and firms supplying labor, materials, supplies, tools, machines, equipment, plant or services exclusively for this project in connection with this Subcontract and having the right to assert liens or other claims against the land, improvements or funds involved in this project or against any bond or other security posted by Contractor or Owner, that any monies paid to Subcontractor pursuant to this Subcontract shall immediately become and constitute a trust fund for the benefit of said persons and firms and shall not in any instance be directed by Subcontractor to any other purpose until all obligations arising hereunder have been fully discharged and all claims arising therefrom have been fully paid.

SECTION 7. INSPECTION AND CORRECTION

7.1 Subcontractor shall at all times furnish to Contractor, Owner or governmental authorities having jurisdiction over the work, safe and adequate facilities and full and free access for inspecting materials and performance of work at the site of construction, shops, factories or any place of business of Subcontractor and its subcontractors and materialmen where materials under this Subcontract may be in the course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports of the progress of the work at any place where materials under this Subcontract may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such detail as may be required by Contractor, including, but not limited to, any plans, drawings or diagrams in the course of preparation.

7.2 If any part of the work or any materials are determined by Owner, Contractor or governing authorities to be improper or defective, either during performance of the work or on or before final inspection or during any applicable warranty period, Subcontractor shall, immediately upon being notified in writing by Contractor to do so, at its own expense, remove, dispose of and replace or otherwise correct, all defective material and workmanship. If Subcontractor fails to correct defective material or workmanship promptly and completely, Contractor, at its option and in addition to any other remedies it may have, may correct the same with its own forces or by employing others and Subcontractor shall pay Contractor all costs, expenses and consequential damages connected therewith.

SECTION 8. MATERIALS AND WORK FURNISHED BY OTHERS

In the event the scope of work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory completion of the work. Use of such items or commencement of work by Subcontractor in such areas shall be deemed to constitute acceptance thereof by Subcontractor and Subcontractor thereby waives any and all claims against Contractor for additional compensation or for damages resulting from any defects therein. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Subcontract.

SECTION 9. PROTECTION OF WORK

9.1 Subcontractor shall effectually secure and protect the work done hereunder and shall assume full responsibility for any and all risk of loss or damage to the work and all materials, tools, equipment, or incidentals until final acceptance thereof and release of responsibility therefor by Owner. Subcontractor shall protect the workmen, materials, tools, equipment and property of Owner, Contractor and others on the

project against injury or damage in any way arising out of or connected with the operations conducted by Subcontractor hereunder or anyone acting under its direction or control, or on its behalf.

9.2 If Subcontractor damages the work of another subcontractor or the equipment or property of Owner, Contractor will issue a backcharge to Subcontractor for an adjustment in the Subcontract Price to reflect the costs to correct the damage. If the subcontractor which caused the damage to an area of the Project cannot be identified, all subcontractors which performed work in the area of the damage within the time frame in which the damage occurred will be backcharged a pro-rata share of the cost of repair. If Subcontractor fails to acknowledge the backcharge within a reasonable time, Contractor shall have recourse as provided in Section 11.1.

SECTION 10. LABOR RELATIONS

10.1 Subcontractor shall keep a representative at the job site during all times when Subcontractor's work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the work. Prior to commencement of the work, Subcontractor shall notify Contractor of the identity of Subcontractor's representative, and in the event of any change of representative, Subcontractor shall notify Contractor of the identity of the new representative prior to such change becoming effective.

10.2 Subcontractor shall enforce strict discipline and good order among its employees. Subcontractor shall, if requested to do so by Contractor, remove from the job site any employee that Contractor determines to be unfit, not skilled in the tasks assigned or otherwise objectionable.

10.3 Should there be picketing on Contractor's job site, and Contractor establishes a reserved gate for Subcontractor's purpose, it shall be the obligation of Subcontractor to continue the proper performance of Subcontractor's work without interruption or delay.

10.4 Subcontractor shall comply with all equal employment opportunity and affirmative action requirements contained in the Prime Contract or promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964. Subcontractor agrees that any further subcontractor of any portion of the work within the scope of this Subcontract and any of Subcontractor's nonexempt suppliers shall be bound by and observe the provisions of this paragraph to the same extent as herein required of Subcontractor and that a copy of this paragraph imposing such obligations upon the further subcontractor or nonexempt supplier shall be included in any further subcontract or purchase order.

10.5 Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all Fair Labor Standards Act provisions and state labor code provisions covering the work. Upon request, Subcontractor agrees to submit certified payroll reports to Contractor not later than three (3) working days after labor has been paid.

SECTION 11. RECOURSE BY CONTRACTOR, DEFAULT, TERMINATION

11.1 Notice to Cure: If Subcontractor fails to commence work at the time required, or at any time refuses or neglects to furnish a sufficient number of properly skilled workers or a sufficient quantity of suitable materials or adequate equipment, or fails to properly and diligently prosecute the work covered by this Agreement or fails to make the progress required or to perform the work in the order and sequence directed, or fails to correct or replace any damaged or defective work or materials, or fails to make prompt payment to its workers, subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or is otherwise guilty of a material breach of a provision of this Agreement, then Subcontractor is deemed to be in default of its obligations under this Agreement; should thereupon Subcontractor fail within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness (Notice to Cure), then Contractor, at its option and in addition to and without prejudice to any other rights or remedies afforded Contractor herein or by law, shall have the right to any or all of the following remedies:

(.1) supply such number of workers and quantity of materials and other facilities as Contractor deems necessary for the correction of any such default and charge the entire cost thereof to Subcontractor, who shall be liable for the payment of said cost plus fifteen percent (15%) of said cost for overhead and profit;

(.2) contract with one or more additional contractors to perform such part of Subcontractor's work as will provide for the most expeditious completion of the total work and charge the cost thereof to Subcontractor; and

(.3) withhold payment of any monies due or thereafter to become due to Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor and Subcontractor shall immediately pay any unpaid balance to Contractor.

11.2 In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice.

11.3 Termination for Default: If Subcontractor fails to commence and continue satisfactorily correction of a default within forty-eight (48) hours after receipt by Subcontractor of the Notice to Cure, then Contractor may terminate Subcontractor's right to perform under this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete Subcontractor's work without any further compensation to Subcontractor for such use. Contractor also may furnish those materials and equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of the work. In such case, Subcontractor shall be entitled to no further payment until the balance of Subcontractor's work has been completed and accepted by the Owner. At that time, all of the costs incurred by Contractor in performing Subcontractor's work, plus a markup of fifteen percent (15%) for overhead and profit on such expenses shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Subcontract Price.

11.4 If at any time Contractor shall have reasonable doubt that Subcontractor has the ability to perform or complete the work in the time and manner required hereunder because of Subcontractor's financial condition, or insufficient manpower, equipment or materials, Subcontractor shall furnish adequate assurance of its ability to perform satisfactorily to Contractor within three (3) working days after written demand therefor by Contractor. The failure of Subcontractor to furnish such assurance shall be deemed a default hereunder and shall thereupon entitle Contractor, without further notice to Subcontractor, to exercise any appropriate remedy or remedies provided for hereunder.

11.5 Owner Termination for Convenience: If the Owner, with or without cause, shall terminate the Prime Contract or shall stop or suspend work under the Prime Contract, or if Owner shall fail to pay when due any sum payable under the Prime Contract, Contractor may order Subcontractor to stop or suspend work under this Subcontract and Contractor shall be liable to Subcontractor for the expenses or costs incurred as a result of any such termination or suspension only if and to the extent that Owner shall be liable to Contractor and pays Contractor therefore.

11.6 Contractor Suspension for Convenience: Contractor may, with or without cause, order Subcontractor to stop or suspend all or any part of the work under this Agreement for such time as may be determined to be appropriate for the convenience of Contractor. Phased work or interruption of the Subcontract work for short periods of time shall not be considered a suspension. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Price and Subcontract Time for any increase in time or cost of performance of this Subcontract caused by such suspension. Neither the Subcontract Price or Subcontract Time shall be adjusted for any suspension, to the extent that performance would have been suspended, due in whole or in part, to the fault or negligence of the Subcontractor or by a cause for which Subcontractor would have been responsible. The Subcontract Price shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

11.7 Bankruptcy-Termination Absent Cure: Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may terminate this Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee;

(.1) promptly cures all defaults;

(.2) provides adequate assurance of future performance;

(.3) compensates Contractor for actual pecuniary loss resulting from such defaults; and

(.4) assumes the obligations of Subcontractor within the statutory time limits.

11.8 Bankruptcy-Interim Remedies: If Subcontractor is not performing in accordance with the terms of this Agreement at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the assurance of Subcontractor or its trustee of its intent and ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the schedule of work.

11.9 Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder or the amount due from Subcontractor to Contractor under any other contract. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

SECTION 12. INDEMNIFICATION

12.1 Upon the premise that this Section 12 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the applicable jurisdiction, Subcontractor shall indemnify and save harmless Owner and Contractor, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liability, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Subcontractor's operations to be performed under this Subcontract for, but not limited to:

(.1) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder;

(.2) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor;

(.3) Infringement of any patent, trademark, copyright or other intellectual property rights which may be brought against the Contractor or Owner arising out of Subcontractor's work;

(.4) Claims and liens (Section 6) for labor performed or materials used or furnished to be used on the project, including all bond premium costs and incidental or consequential damages resulting to Contractor or Owner from such claims or liens;

(.5) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 10, Labor Relations;

(.6) Failure of Subcontractor to comply with the provisions of Section 13, Insurance;

(.7) Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or Statute in any way relating to the occupational health or safety of employees, including but not limited to, the use of Contractor's or other's equipment, hoist, elevators, or scaffolds.

12.2 The indemnification provisions of 12.1(.1) through (.7) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of Owner or Contractor or their agents or employees or independent contractors who are directly responsible to Owner or Contractor, or for defects in design furnished by such persons, provided, however, that the indemnification provisions hereof shall not extend to the SOLE negligence of a party indemnified hereunder.

12.3 Subcontractor shall:

(.1) At Subcontractor's own cost, expense and risk, defend all Claims as defined in this Section 13 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor or Owner or their agents or employees or any of them;

(.2) Pay and satisfy any judgment or decree that may be rendered against Contractor or Owner or their agents or employees, or any of them, arising out of any such Claim; and

(.3) Reimburse Contractor or Owner or their agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 12.

12.4 The indemnities set forth in this Section 12 shall not be limited by the insurance requirements set forth in Section 13.

SECTION 13. INSURANCE

13.1 Casualty Insurance: Prior to commencement of any operations by or on behalf of Subcontractor relating to the Project, and with respect to any and all such operations, Subcontractor shall, at its sole expense, procure and maintain in force and provide to Contractor, Certificates of Insurance and, at Contractor's request, certified copies of policies, evidencing issuance of the following forms of insurance in companies and amounts of deductibles, if any, acceptable to Contractor. Certificates of Insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor.

13.2 Workers' Compensation and Employers' Liability Insurance: Workers' Compensation insurance shall be provided as required by any applicable law or regulation. Employers' Liability insurance shall be provided in amounts not less than:

\$1,000,000 each accident for bodily injury by accident;

\$1,000,000 policy limit for bodily injury by disease;

\$1,000,000 each employee for bodily injury by disease.

If there is an exposure of injury to Subcontractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

13.3 General Liability Insurance: Subcontractor shall carry Commercial General Liability insurance covering all operations by or on behalf of Subcontractor providing insurance for bodily injury liability and property damage liability for limits of liability not less than those indicated below and including coverage for:

(.1) premises and operations;

(.2) products and completed operations;

(.3) contractual liability insuring the obligations assumed by Subcontractor in this Agreement;

(.4) broad form property damage (including completed operations);

(.5) explosion, collapse and underground hazards;

(.6) personal injury liability; and

(.7) liability which Subcontractor may incur as a result of operations, acts or omissions of its subcontractors, suppliers or materialmen, and their agents or employees.

The minimum limits of liability are:

\$1,000,000 each occurrence (combined single limit for bodily injury and property damage);

\$1,000,000 for personal injury liability;

\$2,000,000 aggregate for products-completed operations;

\$2,000,000 general aggregate.

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit, where applicable, shall apply separately to Subcontractor's work under this Subcontract. If the policy does not have an endorsement providing that the general aggregate limit applies separately to the Project, or if defense costs are included in the general aggregate limit, then the required aggregate limit shall be \$2,000,000.

13.4 Automobile Liability Insurance: Subcontractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. If Subcontractor's general liability insurance is provided by a Commercial General Liability policy, then Subcontractor's automobile liability insurance policy shall include coverage for automobile contractual liability.

13.5 Property Insurance: Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

13.6 Builder's Risk Insurance: Upon written request of Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the project and procured by Owner or Contractor. Subcontractor shall satisfy itself as to the existence and extent of such insurance prior to commencement of Subcontractor's work. If Builder's Risk insurance purchased by Owner or Contractor provides coverage for Subcontractor for loss or damage to Subcontractor's work, Subcontractor shall be responsible for the insurance deductible amount applicable to damage to Subcontractor's work and/or damage to other work caused by Subcontractor. If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Prime Contract documents, Subcontractor shall procure and maintain at its own expense property and equipment insurance for portions of Subcontractor's work stored off the site or in transit. If Owner or Contractor has not purchased Builder's Risk or equivalent insurance including the full insurable value of Subcontractor's work, then Subcontractor may procure such insurance at its own expense as will protect the interests of Subcontractor, and its subcontractors in the work. Such insurance shall also apply to any of Owner's or Contractor's property in the care, custody or control of Subcontractor.

13.7 All insurance required under this Subcontract shall contain a waiver of subrogation as to the Contractor and the Owner and their directors, officers and employees. **The Contractor and the Owner and their directors, officers and employees shall be named as additional insureds, via endorsement, on each policy required under this Agreement and any Excess General Liability policies held by Subcontractor. Each policy shall stipulate that the insurance afforded to the additional insureds shall apply as primary insurance and that any other insurance carried by the Contractor or the Owner, or their directors, officers or employees will be excess only and will not contribute to the primary insurance.**

13.8 The required insurance under this Section 13 shall be subject to the approval of Contractor, but any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties

and responsibilities under this Subcontract. If higher limits or other forms of insurance are required in the Subcontract Documents, Subcontractor shall comply with such requirements.

13.9 Contractor may take such steps as are necessary to assure Subcontractor's compliance with its obligations under this Section 13. In the event Subcontractor fails to maintain any insurance coverage required under this Subcontract, Contractor may maintain such coverage and charge the expense to Subcontractor, or terminate this Subcontract.

13.10 Failure of Contractor to enforce in a timely manner any of the provisions of this Section 13 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Subcontract. Any exceptions to the provisions of this Section 13 must be delineated in this Subcontract.

SECTION 14. DISPUTE RESOLUTION

14.1 Alternative Dispute Resolution (ADR): In the event of a dispute arising out of or relating to this Subcontract, Contractor and Subcontractor agree to explore resolution of the dispute through negotiation or ADR techniques before invoking the dispute resolution provisions which follow. If either Contractor or Subcontractor believes that the dispute is not suitable for ADR techniques, or such techniques do not produce a result satisfactory to the parties, either party may invoke the dispute resolution provisions which follow.

14.2 Agreement to Arbitrate: All claims, disputes and matters in question arising out of or relating to this Agreement or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, shall be decided by the claims procedure, including any arbitration clause, specified in the Prime Contract between Contractor and Owner. In the absence of an agreement to arbitrate in the Prime Contract, no claims or disputes shall be arbitrated unless provided for in this Subcontract or mutually agreed upon by the Contractor and Subcontractor in writing.

14.3 Arbitration Procedures (if applicable): In the event the Prime Contract contains an arbitration provision or if arbitration is specifically provided for in this Subcontract, the following shall apply:

(.1) Notice of Demand: Notice of the Demand for Arbitration shall be filed in writing with the other party to this Subcontract and shall conform to the requirements of the arbitration provisions set forth in the Prime Contract. The Demand for Arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

(.2) Award: 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 having jurisdiction.

(.3) Work Continuation and Payment: Unless otherwise agreed in writing, Subcontractor shall carry on the work and maintain the schedule of work pending arbitration, and, if so, Contractor shall continue to make payments in accordance with this Agreement.

(.4) Consolidated Arbitration Proceedings: To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. In this event, it shall be the responsibility of Subcontractor to prepare and present Contractor's case, to the extent the proceedings are related to this Subcontract. Should Contractor enter into arbitration with the Owner or others regarding matters relating to this Subcontract, Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.

(.5) No Limitation of Rights or Remedies: This Section shall not be deemed a limitation of any rights or remedies which Subcontractor may have under any federal or state mechanic's lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived.

SECTION 15. SAFETY PRACTICES

Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, scaffolding utilization, accident prevention, safety equipment and practices including any accident prevention and safety program of Contractor. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes.

SECTION 16. WARRANTY

16.1 General: Subcontractor warrants to Owner, Architect or Engineer and Contractor that the materials furnished and the work performed will strictly comply with the Subcontract Documents and shall be satisfactory to Owner and Contractor. Subcontractor further warrants its work for a period of one (1) year after acceptance by the Owner and Contractor against any defects in material or workmanship and shall repair or otherwise make good, at its own expense, any such defects that occur within the warranty period. The warranty period shall begin on the date the following three conditions are met 1) the issuance of the Certificate of Occupancy, 2&3) the date the Owner and Contractor have fully accepted subcontracted work substantiated in writing. Subcontractor warrants that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Agreement shall be of good quality, free from faults and defects and fit for its intended use both as to workmanship and materials.

SECTION 17. USE OF CONTRACTOR'S EQUIPMENT

In the event the Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate, except as provided in Section 11 or as otherwise stated herein. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subcontractor or its agents, employees, or permittees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to Subcontractor's use or employment of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished.

SECTION 18. ASSIGNMENT AND SUBLETTING

Any assignment, transfer, subletting or delegation, by operation of law or otherwise, in whole or in part, by Subcontractor of this Subcontract, of the work to be performed or of any claims arising hereunder without the prior written consent of Contractor shall be void. Contractor shall not recognize or be bound by any assignment of any right to payment earned or to be earned by performance hereunder by Subcontractor unless and until Contractor shall receive written notice which reasonably proves the assignment and identifies the rights assigned. Any assignment hereunder shall be subject to and Contractor reserves all rights and remedies possessed by or available to Contractor by law or under this Subcontract as against Subcontractor, its sureties and assigns, including, without limitation, rights of set-off, to retain monies, to amend or modify this Agreement, and to assert all other defenses and claims whether or not arising under this Subcontract. The making of any assignment by Subcontractor or any consent thereto by Contractor shall in no event relieve Subcontractor or its sureties hereunder of any of their obligations, duties, responsibilities or liabilities. Any subletting hereunder shall be on the express condition that the further agreement shall be subject to the terms and conditions of this Subcontract and Subcontractor shall incorporate all terms and conditions of this Subcontract in any such further agreement.

SECTION 19. INDEPENDENT CONTRACTOR

19.1 Subcontractor is an independent contractor and not an agent of Contractor and represents that it is fully experienced and properly qualified as an expert to perform the class or classes of work required herein and that it is properly licensed, equipped, organized and financed to perform such work.

19.2 Subcontractor shall, at its sole cost and expense, and without increase in the Subcontract Price, comply with all applicable laws, ordinances, statutes, rules and regulations, whether federal, state, county or municipal, including, but not limited to those relating to wages, hours and working conditions; procure and pay for all permits, licenses and inspections required by any governmental authority for any of the work hereunder and furnish any bonds, security or deposits required by such authority to permit performance of the work; pay any and all taxes, excises, assessments or other charges, including sales and use taxes, levied by any governmental authority on or because of the work to be performed hereunder, or on any labor, materials, tools, equipment or incidentals used or supplied in the performance thereof; pay all taxes and contributions for social security and unemployment insurance and old age retirement benefits whether measured by wages, salaries or other remunerations paid to Subcontractor's employees, or by hours worked or otherwise, and whether levied under existing or subsequently enacted laws, rules or regulations; take all precautions which are necessary and adequate against any conditions created during the progress of Subcontractor's work hereunder which involve a risk of bodily harm to others or a risk of damage to property, including the property of Owner and Contractor.

19.3 Subcontractor shall, upon request and at its own expense, furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

SECTION 20. CLEAN-UP

20.1 At all times and on a daily basis during the course of construction, Subcontractor shall perform its work so as to maintain the site in a clean, safe and orderly condition. Upon termination or completion of its work, Subcontractor shall remove from the site all unused or excess materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Subcontract.

20.2 If Subcontractor fails to perform a clean-up function within twenty-four (24) hours after notification by the Contractor to do so, Contractor may proceed with that function as it deems necessary and in the manner it deems expedient, and Subcontractor agrees that the cost thereof shall be charged to Subcontractor and deducted from monies due under this Subcontract. Notification to Subcontractor's representative shall be considered proper notice.

SECTION 21. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Subcontractor agrees to furnish, with reasonable promptness and in such sequence as to cause no delay in the work or activities of other Subcontractors, all shop drawings, product data and samples as may be required by the Subcontract Documents or Owner or Owner's agent for the complete installation of work within the scope of this Subcontract. Subcontractor shall perform no portion of the subcontract Work requiring submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved. By submitting shop drawings, product data, samples or similar submittals, Subcontractor represents that it has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Subcontract Documents. Contractor requires Subcontractor to provide such "as-built" drawings, maintenance and operation manuals, etc., "As-builts" shall include actual locations and any deviations from any and all prints and disciplines.

SECTION 22. LAYOUT RESPONSIBILITY

Contractor shall establish principal axis lines and levels whereupon Subcontractor shall lay out and shall be strictly responsible for the accuracy of its work and for any loss or damage to other contractors engaged in work on the site by reason of failure of Subcontractor to set out or perform its work correctly. Subcontractor shall exercise prudence so that actual final conditions, details and specifications shall result in the alignment of finish surfaces required by the Subcontract Documents.

SECTION 23. NOTICES

Any notices hereunder shall be in writing and may be served personally on the superintendent or designated representative of the other party at the job site, by email or mail. If service is by registered or certified mail, postage prepaid, directed to the address shown in this Agreement, or as changed by notice in writing to the other party, such service shall be complete upon deposit. Any other service shall be complete upon receipt.

SECTION 24. CHOICE OF LAW

This Agreement shall be governed by, interpreted under and construed and enforced in accordance with the internal laws (excluding conflict of laws) of the State of Florida unless expressly designated otherwise within this Subcontract. The parties agree that jurisdiction and venue in any action shall lie exclusively in Florida and each party agrees to submit to the jurisdiction of the state court residing in Palm Beach County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. If this Agreement concerns a project in which the Owner is an agency of the United States Government, then this Agreement shall be governed by and construed in accordance with applicable federal contract law and regulations and the laws of the State of Florida shall apply only where there is an absence of federal law. This Subcontract shall be deemed entered into in North Palm Beach, Florida, upon execution by Contractor.

SECTION 25. PLANS

Number

Title

Date

CREDENTIALS REQUIRED

- W-9

- General Liability

- Worker's Compensation

- Occupational License

Seagate Capital Construction LLC

Click here to enter text.

Click here to enter text.

Full Name, Title

Signature

Signature

Date

Date