



TRADE PARTNER AGREEMENT

APRIL2021 REV.

TRADE PARTNER AGREEMENT

THIS TRADE PARTNER AGREEMENT ("Agreement") is made and entered into as of the date of signature below by and between MODULAR BUILDING SYSTEMS INTERNATIONAL ("Contractor") and _____ ("Subcontractor") for work to be performed (in each case, a "Project"). Contractor and Subcontractor may be referred to herein individually as a "Party" and collectively as the "Parties." For and in consideration of the terms and covenants of this Agreement, and other valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1. **Scope of Work:** Subcontractor shall perform the agreed upon work (the "Work") as set forth in the Exhibit attached hereto. Subcontractor's Work shall fully conform to the Project's plans, specifications, directives, responses to requests for information, general or supplemental conditions, all approved shop drawings, submittals, and change orders applicable to the Work, and the exhibits to this Agreement (collectively the "Contract Documents"). Additional terms and conditions for a Project may be incorporated herein as an Exhibit and/ or Addendum to this Agreement, signed by both parties.
2. **Contract Price:** Subject to the terms and conditions of this Agreement, Subcontractor shall be paid the price as set forth in the related Exhibit (the "Contract Price") to perform the Work, which sum is the full and complete price including, but not limited to, all labor, materials, general conditions, staging, equipment, tools, permits, licenses, fees, fines, insurance, taxes, bonds, transportation and freight charges, overhead, profit, utilities, costs, and expenses. No other or additional amount shall be paid to Subcontractor without a written change order signed by Contractor and Subcontractor.
3. **Subcontractor Representations.** Subcontractor represents and warrants that: (a) it has carefully examined and is familiar with the Contract Documents, (b) it has visited and is familiar with the Project site and conditions, and (c) it has the ability and capacity to perform the Work in accordance with the terms and conditions of the Contract Documents and this Agreement. Subcontractor assumes for the benefit of Contractor all obligations that Contractor assumes for the benefit of the Owner under the contract or agreement between the Owner and Contractor ("Owner Contractor Agreement") and by the Contract Documents insofar as the same are applicable to the Work to be performed pursuant to this Agreement.
4. **Performance of Work:** Subcontractor agrees to fully complete the Work in accordance with the Contract Documents and the terms and conditions of this Agreement. Subcontractor will perform the Work in a neat and workmanlike manner and in accordance with all applicable laws, ordinances, national, state, and local building code requirements, rules, and regulations promulgated or enforced by the Occupational Safety and Health Administration, all Americans with Disabilities Act and other accessibility requirements, and product manufacturer guidelines and instructions.

All products and materials installed or supplied by Subcontractor shall be new and without defects or deficiencies. Subcontractor shall thoroughly inspect any products or materials before installing them. Upon completion of its Work, Subcontractor shall also deliver and transfer to

the Owner any manufacturer or supplier warranties for the products or materials it provides to the Project.

5. **Payment Terms and Procedures:** Within 10 days after the execution of this Agreement, Subcontractor shall prepare and submit to Contractor an accurate schedule of values ("Schedule of Values") that identifies the various components of its Work and the value thereof and that is acceptable to Contractor, in its sole discretion. Subcontractor shall submit to the Contractor payment applications on the billing intervals the Contractor establishes that reflect the percentage of Work completed during the billing period for the categories in the Schedule of Values, along with lien releases in the Florida statutory form, through the date of the payment application, from Subcontractor and any sub-subcontractors, laborers, and materialmen who have assisted with the performance of the Work or provided Notices to Owner that they are performing work or supplying materials to the Project pursuant to orders from or contracts with Subcontractor. Within ten business days after Contractor's receipt of a payment application and lien releases in proper form, Contractor will pay Subcontractor for Work completed and approved by Contractor and Owner less 10% retainage and any back charges or deductions. Contractor is entitled to withhold payment if Subcontractor is in default or breach of this Agreement.

Prior to final payment, Subcontractor shall: (a) fully and properly complete all Work to the satisfaction of Contractor and Owner, (b) provide final lien releases in the Florida statutory form from Subcontractor and any sub-subcontractors, laborers, and materialmen who have assisted with the performance of the Work or have provided Notices to Owner that they are performing work or supplying materials to the Project pursuant to orders from or contracts with Subcontractor, and (c) deliver and transfer to Owner written warranties from manufacturers or suppliers of any products or materials it provides to the Project.

No certificate or approval given by Owner, Architect, or their agents, nor any payment to the Subcontractor made under this Agreement, shall be deemed conclusive evidence of the full or satisfactory performance of the Work performed by Subcontractor. No payment shall be considered an acceptance of deficient or substandard work or improper or defective materials Subcontractor provided to the Project. Retainage will not be reduced or released until all punch list work required by Subcontractor is fully completed by Subcontractor and accepted by the Owner and the Contractor.

6. **Changes to the Work:** Contractor may order Subcontractor in writing, to make changes to the Work to be performed that are within the general scope of this Agreement consisting of additions, deletions, or other revisions to the Work, with the Contract Price and subcontract time being adjusted accordingly. Subcontractor, prior to commencing such changed or revised Work, shall promptly submit to Contractor a written claim for adjustment of the Contract Price or subcontract time for Contractor's review and approval.

If Contractor and Subcontractor cannot agree upon the adjustment to the Subcontract Price or subcontract time, such issue shall be resolved by the Dispute Procedures. If Contractor directs

Subcontractor in writing, Subcontractor shall proceed with the changed or revised Work notwithstanding any pending claim for adjustments.

Notwithstanding any other provisions of this Agreement, if the Owner elects to defer the Project's construction for more than 120 days or to discontinue the Project's construction, Contractor shall be permitted to terminate this Agreement for its convenience. In such event, Contractor shall pay Subcontractor for its reasonable costs and expenses for any Work up to a maximum of \$10,000.00 and will not have any further obligation or liability to Subcontractor under this Agreement or otherwise with respect to the Project.

7. Inspections: Subcontractor shall secure and pay for all permits, governmental fees, licenses, code and regulatory inspections and monitoring, and other costs necessary for the proper execution and completion of the Work.
8. Stored Materials: Subcontractor shall be responsible for the protection of stored materials delivered to or stored at the Project. All materials damaged, lost, or stolen shall be repaired and replaced by Subcontractor at no cost to Contractor. Contractor will not pay for any stored materials unless they are permanently installed at the Project.
9. Warranties and guarantees: Subcontractor warrants the Work performed and materials supplied in connection with its Work to Contractor on the same terms and for the same time period as Contractor warrants the work to Owner under the Owner-Contractor Agreement. Additionally, Subcontractor warrants the Work performed and materials supplied in connection with its Work for a period of one year after a final certificate of occupancy is issued for the Project. Subcontractor also agrees that it is bound by any statutory warranties applicable to its Work, specifically including the warranties set forth in Section 718.203 and 718.618, Florida Statutes, if the Project is a condominium. Within 5 business days after receiving written notice from Contractor or Owner of any defect or deficiency in Subcontractor's Work or the materials supplied in connection with the Work during the time periods set forth above, Subcontractor shall cure such defect or deficiency at its own expense.
10. Work Schedules: Subcontractor represents that, with 10 days' notice, it will be able to supply labor and materials to commence the Work at the Project. Time is of the essence under this Agreement, and Subcontractor shall complete its Work within the time frame Contractor allots or shall be responsible for the associated damages to Contractor or Owner.
11. Insurance: Prior to commencing any Work under this Agreement, the Subcontractor shall procure, pay for, and maintain insurance coverage for claims for bodily injury, death, or property damage which arise out of or relate to the operations, activities, actions, or inactions of Subcontractor, any sub-Subcontractor or other person or entity employed by Subcontractor or any sub-subcontractor, or by anyone for whose acts they may be liable. Such insurance shall include, but not be limited to, the following coverage and minimum policy limits:

Policy Type Minimum Limits Commercial General Liability \$500,000 Each Occurrence; \$1,000,000 Products/Completed Operations Aggregate; and \$1,000,000 General Aggregate (per project)

Workers' Compensation Comply with Florida's Statutory Limits Employer's Liability \$1,000,000 Each Accident Automobile Liability \$500,000 Any One Accident Or Loss Subcontractor's Commercial General Liability insurance shall: (a) include coverage for Products/Completed Operations which shall be maintained for five years after completion of the Work, (b) specifically cover as an "insured contract" the Subcontractor's defense and indemnity obligations under this Agreement, and (c) include Subcontractor's insurance carriers' waiver of subrogation rights against the Owner and Contractor for any losses or expenses paid under Subcontractor's insurance policies.

Subcontractor shall obtain endorsements on its Commercial General Liability policies that designate the Contractor and the Owner as Additional Insureds with respect to any liability or claims arising out of or relating in whole or in part to: (a) Subcontractor's operations under this Agreement, or (b) any claim for bodily injury, death, or property damage brought against the Contractor or the Owner arising from or relating to Subcontractor's performance under this Agreement. Such endorsements shall remain in effect for five years after completion of Subcontractor's Work and shall provide Additional Insured coverage to Contractor and Owner for Subcontractor's on-going operations and products/completed operations. Subcontractor shall also obtain endorsements designating the Contractor and the Owner as Additional Insureds on Subcontractor's Commercial Automobile Liability policies with respect to any liability arising from or relating to Subcontractor's operation of any motor vehicles in conjunction with the Project. Subcontractor's insurance shall provide coverage, including the required Additional Insured coverage, on a primary and non-contributory basis, and any coverage maintained by the Contractor or the Owner shall be treated as excess coverage.

Subcontractor's insurance policies required under this Agreement shall contain a provision that coverage afforded thereunder shall not be cancelled, or restrictive modifications added, without 30 days prior written notice to the Contractor.

Subcontractor shall maintain the insurance coverages required under this Agreement and by the other Contract Documents, at the Subcontractor's sole expense, with insurance companies with an A.M. Best rating of not less than A-.

Subcontractor shall provide to Contractor Certificates of Insurance before starting any Work. Such Certificates of Insurance shall be in a form acceptable to the Contractor and shall provide satisfactory evidence that the Subcontractor has complied with all insurance requirements in this Agreement. Subcontractor shall disclose any deductible or self-insured retention under any required insurance policies. Upon request, Subcontractor shall provide the Contractor complete copies of such insurance policies and all endorsements thereto.

Subcontractor shall require and verify that any sub-subcontractors, laborers, materialmen, or others at the Project site pursuant to a contract or agreement with Subcontractor or that are under Subcontractor's direction or control, shall procure, pay for, and maintain insurance coverage of the same policy types and limits as required for Subcontractor pursuant to this Agreement.

12. Assignment of Agreement: The Subcontractor shall not transfer or assign this Agreement, in whole or in part, without the Contractor's written consent.

13. Financial Obligations: Subcontractor agrees to timely pay for all materials and labor necessary to perform its Work. Contractor reserves the right to issue checks for payment hereunder payable jointly to Subcontractor and any one or more of its sub-subcontractors, laborers, or materialmen. Subcontractors shall pay all sums for social security, retirement contributions, unemployment insurance, annuities, pensions, or welfare funds that are required by any labor union contract or governmental body, and all withholding taxes. Subcontractor shall pay all sales, consumer use, and other similar taxes required by law.
14. Indemnification: To the fullest extent permitted by law, Subcontractor shall defend, indemnify, and hold harmless Contractor and Owner, jointly and severally, and their respective officers, directors, and employees, from and against any and all claims, actions, proceedings, suits, losses, liability, damages, fines, penalties, or judgments (collectively "Claims") for: (a) injuries to any person, including illness or death, or damage to property, arising from any act, omission, operations, or negligence of Subcontractor or its sub-subcontractors, materialmen, or laborers of any tier, (b) any alleged or actual breach of Subcontractor's obligations pursuant to this Agreement, or (c) Subcontractor's failure to comply with any applicable laws, rules, codes, ordinances, or regulations. Subcontractor's obligation hereunder includes the payment of all of Contractor's and Owner's attorneys' fees, costs, and expenses incurred on account of any Claims.
15. Labor and Safety: Subcontractor is responsible for the conduct and safety of its employees, agents, sub-subcontractors, laborers, and materialmen and others under its direction or control. No radios, headsets, etc., are allowed on the Project. Consumption of alcohol or illegal drugs is forbidden, and persons under the influence of alcohol or illegal drugs are prohibited from entering the Project site or performing any work involving the Project.

Subcontractor shall take all reasonable measures to protect its employees, agents, subcontractors, laborers, materialmen, and others at the Project site, including maintaining a safe, clean, and secure work area. Subcontractor is responsible for furnishing its employees with any and all necessary or mandated safety equipment, including but not limited to ladders, scaffolds, barricades, and other fall protection. Subcontractor shall conform with all applicable safety codes and regulations to maintain a safe and hazard-free work area at the Project. Subcontractor shall take all necessary measures, whether mandated by law, to assure the safety of its employees and others on the Project site.
16. Staffing: Subcontractor shall utilize experienced and competent laborers and supervisory staff. If any person utilized by Subcontractor is delaying or obstructing the progress of work at the Project, acts contrary to any safety requirements or Contractor's instructions, or has consumed alcoholic beverages or illegal drugs, Subcontractor shall immediately discharge or otherwise remove such person from the Project.
17. Default and Termination: Subcontractor shall be in default of this Agreement if it: (a) fails to prosecute the Work with promptness and diligence, (b) fails to make prompt payments to its employees, sub-subcontractors, laborers, materialmen, or others performing work or supplying materials for the Work, (c) causes any stoppage of or interference with the work of Contractor or any other subcontractors, or (d) otherwise breaches any provision of this Agreement. If Subcontractor fails to cure such default within 48 hours after receipt of written

notice from Contractor, then Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

- (i) Contractor can complete the Work, using its staff or others, and charge all costs thereof to Subcontractor, including reasonable overhead, profit, attorneys' fees, and costs;
- (ii) Contractor can withhold payment of any funds otherwise due to Subcontractor until such default is resolved or corrected, the costs associated with the default are determined, and Contractor applies such funds to satisfy the costs associated with the default, with any remaining funds being paid to Subcontractor;
- (iii) Contractor can recover all damages from Subcontractor including attorneys' fees and costs; and
- (iv) Contractor can terminate Subcontractor's right to continue to perform the Agreement by delivering written notice of termination to Subcontractor. Thereafter, Contractor may take possession of the materials, tools, and equipment of Subcontractor at the Project, and through Contractor's staff or others, complete the Work and charge all costs thereof to the Subcontractor, including reasonable overhead, profit, attorneys' fees, and costs.

Notwithstanding any other provision of this Agreement, in the event of an emergency affecting the safety of persons or property caused by Subcontractor or arising from or relating to its Work, Contractor may take any measures it deems appropriate, in its sole discretion and without prior notice to Subcontractor, in an attempt to avert or mitigate the emergency, and shall charge the costs thereof to Subcontractor.

If Subcontractor files for bankruptcy, makes any assignment for the benefit of its creditors, or if a receiver is appointed for Subcontractor, then Contractor may, without prejudice to any other right or remedy, terminate in writing Subcontractor's right to complete this Agreement and take possession of all Subcontractor's materials, tools, and equipment located at the Project, and may finish the Work by whatever method it deems expedient. In such case, Subcontractor shall not be entitled to receive any further payment until the Work is finished, including the correction of any defects or deficiencies. If the unpaid balance of the Contract Price exceeds the cost of finishing the Work, such excess shall be paid to Subcontractor after Subcontractor satisfies the requirements to obtain a payment under this Agreement. If such costs exceed the unpaid balance, Subcontractor shall pay the difference to Contractor within 5 days after receiving written notice of the amount due.

- 18. Notices: All notices to be delivered pursuant to this Agreement shall be deemed effective if sent by First-Class United States Mail, addressed to the other party at the mailing address set forth in the first paragraph of this Agreement. Any notice provided for in this Agreement shall be deemed to have been given when deposited in the United States Mail.
- 19. Independent Contractor: In connection with the Project, Subcontractor is acting as an independent contractor on an at-will basis. Nothing in this Agreement shall in any way constitute a partnership between, or a joint venture by, the Contractor and Subcontractor. Subcontractor will not be considered an employee of the Contractor for any purpose. The

Subcontractor will be solely responsible for the payment and reporting of any and all federal and state taxes and withholdings due on amounts paid hereunder, and Contractor will not withhold any amounts for federal, state or local income taxes, assessments, or withholding liabilities, and the Subcontractor will indemnify and hold Contractor harmless from and against any costs, damages, or liabilities relating to any such taxes, assessments, or withholdings.

20. Dispute Procedures: Any dispute between the Contractor and the Subcontractor arising out of or relating to this Subcontract, including, without limitation, any alleged breach thereof, shall at Contractor's sole discretion and selection either: (a) be resolved by the same procedures and in the same manner as required by the Owner-Contractor Agreement for disputes between Contractor and the Owner, including any requirement to mediate or arbitrate disputes, except that a decision by the Architect shall not be a condition precedent to mediation, arbitration, or litigation; or (b) be resolved by an arbitration conducted by a single arbitrator (collectively the "Dispute Procedures"). If arbitration is selected, the Parties shall attempt to jointly select an arbitrator, and if they cannot do so within seven days, each Party shall designate an arbitrator on the American Arbitration Association's National Roster of Arbitrators who does not have any conflict of interest, and the two designees shall jointly select the arbitrator who will arbitrate the Parties' dispute.

The arbitrator shall issue a written award setting forth his or her findings ("Award"). Any court with jurisdiction may enter judgment upon the Award. The arbitrator may allocate amongst the Parties all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees and costs of the prevailing Party.

The venue for any arbitration or legal proceedings between Contractor and Subcontractor arising out of or relating to this Agreement shall only be in the location provided for in the Owner Contractor Agreement or in the county where the Project is located, as determined by Contractor in its sole discretion, and in no other location.

21. Attorneys' Fees and Costs: In the event of any breach of this Agreement or any dispute between Contractor and Subcontractor arising from or relating to this Agreement, without regard to whether an arbitration proceeding, or lawsuit is filed, the prevailing Party shall recover from the non-prevailing Party all reasonable attorneys' fees, costs, and expenses through and including any appellate proceedings.
22. Governing law: This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida without regard to its choice of law rules.
23. Entire agreement: This Agreement is the entire agreement between the Parties relating to the subject matter hereof and shall be binding upon and inure to the benefit of the successors and assigns of each. The Parties acknowledge that no promise, inducement, or agreement not contained herein has been expressed or made to them in connection with this Agreement.
24. Modification of Agreement: Except as otherwise set forth in this Agreement, this Agreement cannot be altered, amended, modified, or otherwise changed in any respect except by an instrument in writing executed by each of the Parties.

25. Paragraph headings: The titles to the paragraphs of this Agreement are solely for the convenience of the Parties and shall not be used to explain, modify, simplify or aid in the interpretation of the provisions of this Agreement.

26. Interpretation: The Parties agree that the rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated herein.

SUBCONTRACTOR:

CONTRACTOR:

[Subcontractor corporate entity name]

Modular Building Systems International

By: _____

By: _____

Name: _____

Name: Patricia K. Berk

Title: _____

Title: President

Date: _____

Date: _____

Address: _____

Address: 614 E Hwy 50, Suite 326

Clermont, FL 34711

Main Telephone: _____

Telephone: 407-905-9951

Email address: _____

Email address: admin@mbsi.com

Field Contact: _____

Phone: _____