

**Subcontract Purchase Order General Requirements**

**Exhibit A**

**Subcontract Document 2.1.2.1**

**Roofing Roofing Subcontractor .**

**Concept Construction Services Incorporated ("CCSI") Project No.<06030-01>**

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Whereas **Concept Construction Services Incorporated ("CCSI")** has heretofore entered into a Subcontract Purchase Order in Writing ("Subcontract") with **<Roofing Subcontractor .> ("Roofing Subcontractor")**, whereby "Roofing Subcontractor" agrees to furnish Materials and to perform Labor necessary in connection with the Project known as **Digital Realty Trust, 365 South Randolphville Road , Piscataway, NJ ("Project")**, in which **Digital Realty Trust ("Owner")** is the **Owner**, and in which CCSI has entered into a **General Contract ("General Contract")** with the Owner, pursuant to certain Plans and Specifications referred to in said General Contract, copies of which are on file in the office of CCSI and which Roofing Subcontractor has examined.

**PAYMENTS:**

Prior to the submission of the First Requisition, the Roofing Subcontractor shall submit in writing for approval by CCSI a payment breakdown of the various portions of the Work ("Work"), as described in Section 1. of the Subcontract. The Work Items contained in the Roofing Subcontractor's payment breakdown shall correspond to the Work Items contained in the CCSI payment breakdown approved by the Owner. However, in no event shall the Roofing Subcontractor's General Conditions or Mobilization exceed two percent (2%) of the total Subcontract amount. Progress payments for work performed during any Calendar Month shall be payable to the Roofing Subcontractor within fifteen (15) Days subsequent to receipt by CCSI of payment from the Owner. Receipt of payment from CCSI is a Condition Precedent to the Roofing Subcontractor's right to receive payment. Furthermore, before any payment is made by CCSI to the Roofing Subcontractor, the Roofing Subcontractor shall submit to CCSI a Partial Release and Waiver of Lien, using the Form annexed hereto as Exhibit A: 2.1.2.2. The Roofing Subcontractor also shall submit a similar Partial Release and Waiver of Lien for any of its Roofing Subcontractors or Material Suppliers.

The Roofing Subcontractor shall complete all Requisitions for Payment ("Requisition") using the AIA Form G702 in a way satisfactory to CCSI by Day twenty (20) of each Month. Facsimile copies will not be accepted. CCSI agrees that it shall submit a Requisition to the Owner on a Monthly basis, completed in accordance with the Terms of the General Contract. In the event that any Invoice submitted by the Roofing Subcontractor is pro-rated by Highland Associates ("Architect"), RoofingProjects.com ("Roof Consultant"), or the Owner, the Roofing Subcontractor shall be entitled only to its proportional share of each payment. Any determination by the Architect, Roof Consultant, or Owner as to the percentage of completion of Work performed by the Roofing Subcontractor shall be binding on the Roofing Subcontractor. All progress payments made to the Roofing Subcontractor shall be reduced by ten percent (10%) Retainage of the Amount so computed. A Full Release of Retainage to the Roofing Subcontractor shall be made only after CCSI receives a Full Release of Retainage from the Owner.

The Roofing Subcontractor shall be entitled to final payment only when the Roofing Subcontractor has performed fully all of its responsibilities under the Subcontract, including but not limited to the submission of all close out Documents, Manuals, Guarantees, and Warranties. As a Condition Precedent to the final payment, the Architect and/or Roof Consultant shall have issued a Final Certificate for Payment that shall be approved by the Owner and the Roofing Subcontractor shall have executed a Final Release and Waiver of Lien, using the Form annexed hereto as Exhibit A: 2.1.2.3. Subsequent to the receipt of its final payment, CCSI shall pay the Roofing Subcontractor within thirty (30) Days.

**SCOPE OF WORK:**

The Roofing Subcontractor shall perform the Work to the satisfaction of the Owner, Architect, Roof Consultant and CCSI. This Work shall be performed in accordance with the Contract List of Drawings (see Exhibit B: 2.1.3) and any and all Specifications and/or Addenda and/or Modifications thereto made by the Owner and/or the Architect and/or the Roof Consultant. It is expressly understood that the Roofing Subcontractor is bound to all of the Terms and Conditions of the General Contract, Plans, and Specifications and that the Roofing Subcontractor assumes all of the Obligations of CCSI under the General Contract including but not limited to Provisions concerning Time of Performance, Time Extensions, Notice and Delay Provisions, Changes to the Work, Safety Requirements, as described in the CCSI Health and Safety Program ("HASp"), and that the Roofing Subcontractor remains in compliance at all times with all applicable Laws and Regulations and any and all CCSI Policies. In the event a conflict exists between the General Contract and the Subcontract, the more restrictive language shall apply.

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By <Roofing

**Subcontractor>**

**TIME OF PERFORMANCE:**

Time management is an essential metric used to assess performance of the General Contract. The Roofing Subcontractor must comply with a specific Project Schedule ("Schedule") (see Exhibit C: 2.1.4) at all times, including but not limited to all Milestone Dates for the submission and/or completion of Intermediate Work. The Roofing Subcontractor shall have the responsibility to coordinate all Work, Layouts, and Work with other Roofing Subcontractors to ensure the timely Delivery of all Labor, Materials, and Equipment in compliance with this Schedule.

**NOTICE OF DELAY:**

Should the Roofing Subcontractor be delayed or anticipate being delayed or disrupted in performing its Work for any reason, it shall promptly and in no event longer than three (3) Calendar Days after the commencement of any Condition which is causing or is threatening to cause such delay or disruption, notify CCSI in writing of the effect of such Condition on the Schedule, expressly describing in what respects and why said Condition is causing or is threatening to cause such delay. The Roofing Subcontractor's failure to comply at all times strictly with this Notice Requirement shall be sufficient cause for CCSI to deny the Roofing Subcontractor a Change in Schedule Request and to require it to conform to the Schedule currently in effect, at no cost to CCSI or to the Owner.

**CHANGES IN THE WORK ("CHANGE ORDERS"):**

The Owner, the Architect, the Roof Consultant and/or CCSI, at any time, in any quantity, or amount without invalidating or voiding the General Contract, may add, delete, modify, or alter the Work to be performed under the Subcontract including, without limitation, ordering Changes or Extra Work. The Roofing Subcontractor shall not perform any change in the Work unless it has received a Change Order or Field Order duly executed and noted by CCSI. The Roofing Subcontractor shall be obligated to perform changed work promptly in conformance with any Change Order issued therewith. In any situation whereby the Roofing Subcontractor disputes compensation for the extra or additional Work, the Roofing Subcontractor shall not cease work but shall perform said Work as directed by CCSI. The Roofing Subcontractor shall assume sole risk and without additional liability of CCSI thereof for any payment if the Roofing Subcontractor performs any Work without prior express written authorization from CCSI. In the event that the Scope of Work decreases, the Subcontract Sum (see Item 3.) shall be decreased by an amount equal to the amount due the Roofing Subcontractor for such Work less any Cost expended by the Roofing Subcontractor prior to such notice of decrease in the Scope of Work.

The Roofing Subcontractor agrees to perform all approved Change Order Work at its Direct Cost plus 10 percent (10%) for Overhead and for Profit. Direct Cost shall include any and all Costs necessary to complete the Change Order Work, including but not limited to Labor, Materials, and Equipment. In the event that the General Contract provides a more restrictive method for the payment of the Change Order Work, the Roofing Subcontractor shall be bound by the Terms of the General Contract.

**PROTECTION OF THE WORK:**

The Roofing Subcontractor and its Roofing Subcontractors, where applicable, shall provide sufficient, safe, and proper facilities at all times, both in their Shop and at the Project Worksite, in full compliance with all applicable Laws and Regulations and in conformance with CCSI's HASP and Policies. The Roofing Subcontractor shall cover and protect the Project Worksite, remove from said Project Worksite all of its debris, and exercise due diligence to secure the Project Worksite from injury to Persons and from all damage happening to said Project Worksite. In the event that the Roofing Subcontractor uses any CCSI Equipment, including but not limited to Scaffolding, the Roofing Subcontractor is responsible to inspect said Equipment and to hold harmless and to indemnify CCSI in accordance with the provisions of the Subcontract.

Only if the Owner pays CCSI for stored Materials held off the Project Worksite shall the Roofing Subcontractor be entitled to payment for it. If such payment is made, Title to said Materials shall pass to the Owner but the Roofing Subcontractor shall remain fully liable for all Materials not delivered to the Project Worksite and the Roofing Subcontractor shall be responsible to provide Insurance to cover the full value of the Materials.

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By <Roofing

**Subcontractor>**

**INDEMNITY, HOLD HARMLESS, AND INSURANCE PROVISIONS:**

The Roofing Subcontractor shall Indemnify and hold CCSI harmless from all Liability, Loss, and/or Cost and/or Damage, including Attorney' Fees, from all Claims for injuries to Persons and/or Property Damage, both Real and Personal, and/or Death from Cause, while on or near the Project Worksite, of its Employees or the Employees of its Roofing Subcontractor, or by reason of Claims of any Person or Persons, including CCSI, for injuries to Person or to Property, both Real and Personal, from any cause occasioned in whole or in part by any Act or Omission of the Roofing Subcontractor, its Representatives, Employees, Roofing Subcontractors, or Suppliers, and whether or not it is contended that CCSI contributed hereto in whole or in part, or was responsible therefore by reason of non-delegable Duty. If, however, applicable Law limits this Indemnification, then said Indemnification herein shall be similarly limited to conform to such Law, it being the intention that this Indemnification herein shall be as broad as permitted by applicable Law. CCSI may retain any money due or to become due hereunder sufficient to Indemnify it against such Injuries, Claims, Suits, Actions, Costs and/or Damages, should any such Injury, Claim, Suit, Action, Cost, and/or Damage arise.

The Roofing Subcontractor shall, before commencing work and until final completion and acceptance of the General Contract, maintain Worker's Compensation Insurance, Public Liability Insurance, Contractual Liability Insurance, and Surety Bonds, when applicable, in amounts not less than specified in Exhibit D: 2.1.5. The Roofing Subcontractor shall not commence work under this Subcontract until it has obtained all Insurance required under this Article, nor shall the Roofing Subcontractor sublet any portion of his Work without assuming full responsibility for requiring similar insurance from its Roofing Subcontractors and submitting satisfactory evidence to that effect to CCSI. Failure of the Roofing Subcontractor to provide said Insurance might, at the option of CCSI, result in this Subcontract being terminated.

**TERMINATION:**

If any of the following Events ("Events of Default") shall occur: 1) the Roofing Subcontractor shall violate any substantial Provision of the Subcontract, and/or 2) any material adverse change shall take place in the financial condition of the Roofing Subcontractor, and/or 3) any Action shall be taken by the Roofing Subcontractor that would result in the Roofing Subcontractor becoming the subject of an Insolvency or Bankruptcy Proceeding, than CCSI may serve express written Notice upon the Roofing Subcontractor thereby terminating or partially terminating this Subcontract at a specified Date. The Notice shall contain the reasons for the Termination or Partial Termination and shall not serve to terminate this Subcontract if the Roofing Subcontractor cures all said Events of Default within three (3) Days of the Notice of Termination. CCSI reserves the right under this Subcontract Provision to implement any Remedy at Law or in Equity, as it deems appropriate and necessary to secure the satisfactory performance of any and all Provisions of this Subcontract and to determine the extent of any and all Damages that are assessable against the Roofing Subcontractor and/or any related Roofing Subcontractor and/ or Material Men pertaining to the execution of this Subcontract and to provide any Contractual Materials, Parts, Tools, Equipment, and/or any Work that is to be delivered to or incorporated into the Project Worksite.

In the event the Owner terminates the General Contract for convenience, than CCSI may terminate the Subcontract for convenience. In this case, the Roofing Subcontractor shall be paid only for work completed and approved by the Owner, Architect and or the Roof Consultant as of the Date of the Termination for Convenience. Furthermore, CCSI reserves the right to terminate the Subcontract for its own convenience and in this case the Roofing Subcontractor shall be paid only for work completed and approved by the Owner, Architect and or the Roof Consultant as of the Date of the Termination for Convenience.

**SUSPENSION OF WORK:**

The Owner, the Architect, the Roof Consultant and/or CCSI may at any time and for any reason direct the Roofing Subcontractor to suspend, stop or interrupt its Work or any part thereof. Such direction shall be in writing and shall specify the period during which the Work is to be stopped. The Roofing Subcontractor shall resume the Work upon the Date specified, and in the manner specified or directed, in such direction or upon such Date as CCSI may thereafter specify in writing. The period during which the Work shall have been suspended, stopped or interrupted may, if warranted and if said stoppage arose through no-fault of the Roofing Subcontractor, be added to the time fixed for performance, as laid out in the Schedule. A suspension, stoppage, or interruption of the Work pursuant to this Provision shall not give rise to any Claim against CCSI by the Roofing Subcontractor, seeking additional compensation. This Clause shall not act as any limitation on CCSI to seek Damages, Back Charges, Set-Offs, and/or any Claim that CCSI may assert against the Roofing Subcontractor for any stoppages or delays proximately caused by the Acts or Omissions of the Roofing Subcontractor.

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By <Roofing

**Subcontractor>**

**NOTICES:**

Any Notice(s) that must or may be given to any Party to this Agreement shall be sent via U.S. Certified or Registered Mail only to the hereinbefore-mentioned addresses, as described in Subcontract Document 2.1.1.

**APPROVALS AND ASSIGNMENTS:**

This Subcontract is made conditioned upon the approval of the Roofing Subcontractor by the Owner, Architect and or the Roof Consultant where and when such approval is required by the Terms of the General Contract. The Roofing Subcontractor shall not sublet any portion of the Labor or Materials involved without first obtaining approval of its prospective Roofing Subcontractor and/or Supplier by CCSI. The Roofing Subcontractor will not enter into any Contract with any Person other than CCSI for the Modification and/or Addition to any portion of the Premises involved herein pending completion and acceptance of the Project and will handle all Matters relating to this Project solely through CCSI unless otherwise directed by CCSI in writing. The assignment by the Roofing Subcontractor of this Subcontract or any interest herein, or of any money due or to become due by reason of the Terms hereof without the prior written consent of CCSI shall be void.

**LABOR RELATIONS:**

The Roofing Subcontractor shall procure its Materials from such Sources and employ such Labor subject to such Terms and Conditions as will result in harmonious Labor relations on the Project Worksite and will prevent strikes and/or other Labor disputes by other Trades. In the event of a strike or other Labor dispute affecting the Labor employed by the Roofing Subcontractor, than CCSI may, at its option, terminate this Subcontract but shall compensate the Roofing Subcontractor for the value of Labor and Material furnished proportioned upon the Subcontract price. When prevailing Wages are applicable, the Roofing Subcontractor shall submit with each Monthly Requisition certified Payrolls. The Roofing Subcontractor's failure to submit certified Payrolls will result in the withholding of payment by CCSI until the Roofing Subcontractor has complied fully. The Roofing Subcontractor shall maintain and shall keep available to CCSI all Records and other data relating to the Work, including the Roofing Subcontractor's compliance with the payment of prevailing Wages.

**MECHANIC'S LIEN AND CLAIMS:**

If any Mechanic's Lien and/or other Claim shall be filed for or on account of the Work or if any Restraining Notices related to the Roofing Subcontractor's performance of the Work or Judgments shall be filed against said Roofing Subcontractor, then said Roofing Subcontractor shall, within ten (10) Days thereof upon Notification, discharge such Mechanic's Lien or Claim or otherwise make provision satisfactory to CCSI, including but not limited to Bonding off any Lien filed by the Roofing Subcontractor and/or any of its Roofing Subcontractors. Any failure by the Roofing Subcontractor to comply with the Terms of this Provision shall constitute a significant and material breach of this Subcontract. If CCSI discharges any Mechanic's Lien, than all Costs, including Attorney's Fees related to said Discharge, shall be chargeable to the Roofing Subcontractor.

**GUARANTEES:**

All work performed by the Roofing Subcontractor shall be guaranteed, in writing, for a period of Two (2) Years from the Date the Architect and or the Roof Consultant issues the Certificate of Substantial Completion, unless the General Contract requires a longer Guarantee, in which case the Roofing Subcontractor shall be bound by the Terms of the General Contract. Upon completion of the Work, the Roofing Subcontractor shall deliver to CCSI all written Guarantees made in connection with the Roofing Subcontractor's Work.

**NO WAIVER:**

It further is mutually agreed between CCSI and the Roofing Subcontractor that no payment made hereunder this Subcontract, including the final payment, shall be evidence of the performance of said Subcontract, either wholly or in part, against any claim of CCSI and that no payment shall be construed to be an acceptance of any defective work or as a Waiver of any of the Provisions of this Subcontract by CCSI and that any Waiver of any Terms hereof by CCSI shall be without prejudice and that such Waiver shall not be deemed to continue or to affect the other Terms, Provisions, or Covenants of this Subcontract.

Subcontractor>

**ATTORNEY'S FEES:**

If the Terms and/or Provisions of this Subcontract, including any Terms and/or Provisions of any other Agreement, the Terms which are incorporated herein by reference hereto, are breached by the Roofing Subcontractor, than CCSI shall be entitled to reasonable and customary Attorney's Fees, including reasonable Costs and Disbursements, to enforce any Provision of the Subcontract.

**ACTIONS AND PROCEEDINGS:**

This Subcontract shall be construed under the Laws of the State of New York. No Action or Proceeding shall be instituted by the Roofing Subcontractor against CCSI upon any Claim arising out of or relating to this Subcontract or the breach thereof of this Subcontract, unless such Action or Proceeding shall be commenced within one (1) Year upon completion of work by the Roofing Subcontractor. The Roofing Subcontractor agrees that any such Action or Proceeding shall be commenced in the State of New York, County of New York, notwithstanding any contrary Provisions contained in the General Contract.

**ENTIRE AGREEMENT:**

This Subcontract is complete in and of itself and any and all prior Agreements, Understandings, and Communications, whether oral or written, are deemed merged herein and superseded hereby in this Agreement. If a Court having jurisdiction over the Subject Matter of this Subcontract shall determine that any one or more of the Provisions of this Subcontract are illegal, void, or otherwise unenforceable as a Matter of Law, than such Provision(s) shall be deemed to be severed from this Subcontract and the balance of this Subcontract given full force and effect to accomplish, as nearly as may be practicable, the intention's hereto of the Parties. Further, it is expressly understood by and between the Parties hereto that this Subcontract cannot be altered, modified, or terminated orally.

In the event a conflict arises between any Provision contained herein the Subcontract, elsewhere, or with the Terms of the General Contract, such Terms being specifically incorporated by reference, the Roofing Subcontractor shall be bound by the more restrictive Terms regardless of any cost increase in kind.

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**CONTRACTED BY:  
SUBCONTRACTOR:  
Concept Construction Services, Incorporated  
Subcontractor .>**

**ROOFING  
<Roofing Roofing**

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

