

## **MASTER TERMS AND CONDITIONS FOR SUBCONTRACT AGREEMENTS**

### **4.0 INCORPORATION BY REFERENCE OF CONTRACT DOCUMENTS.**

4.1 The Contract Documents are incorporated in the Subcontract Agreement (hereinafter, the "Agreement") by reference and made a part hereof. Subcontractor represents and agrees that it has carefully examined and understands the Agreement and the Contract Documents. The Contract Documents (other than provisions relating to the contract price or fee payable to Contractor) have been made available to Subcontractor and will remain available to Subcontractor at reasonable times at the Construction Site or at the office of Contractor. Subcontractor shall be bound to Contractor by the terms of the Contract Documents to the extent applicable to Subcontractor's Work (as defined in Article 2 of the Agreement) and shall assume toward Contractor and Owner, with respect to Subcontractor's Work, all the obligations and responsibilities that Contractor, as Contractor, by the Contract Documents, assumes toward Owner.

4.2 The Agreement and the provisions of the Contract Documents are intended to supplement and complement each other and shall, where possible, be so interpreted. If, however, any provision of the Agreement conflicts with a provision of the Contract Documents, or if there is a conflict within the Agreement or within any of the Contract Documents, the provision imposing the higher quality, greater quantity or greater duty or obligation on Subcontractor shall govern.

4.3 The Contractor is, and will, be acting as the Owner's agent for the purposes of performing the work in the best interest of the Owner. The Contractor will function as a conduit for payments received by the Owner in its payments to the Subcontractor.

### **5.0 TIME OF PERFORMANCE; PROJECT CONSTRUCTION SCHEDULE; PROJECT MEETINGS.**

5.1 Subcontractor shall commence Subcontractor's Work upon the first to occur of the Effective Date of this contract or the delivery to Subcontractor of a notice to proceed from Contractor. Prior to commencement of Subcontractor's Work, Subcontractor shall deliver to Contractor a detailed and comprehensive schedule that (a) shows all major elements and phases of Subcontractor's Work, (b) breaks down each element or phase by trade or task, (c) shows manpower loading for each trade or task, (d) shows early and late start dates so that all "float" time will be accurately identified, and (e) otherwise is in a form satisfactory to Contractor. The submitted Schedule shall be for Contractor's overall scheduling purposes and shall not be construed or implied as modifying Subcontractor's commitment to provide all personnel, equipment and materials necessary to complete Subcontractor's Work in a timely manner in accordance with the Contract Documents. Subcontractor shall diligently and continuously prosecute and complete Subcontractor's Work and coordinate Subcontractor's Work with the other work being performed on the Project, in accordance with the overall Project Construction Schedule, any revisions to the overall Project Construction Schedule, and any other scheduling requirements listed in the Agreement, so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of Subcontractor's Work or other work on the Project. **TIME IS OF THE ESSENCE OF THE AGREEMENT.**

5.2 If Subcontractor fails to perform any phase of Subcontractor's Work in accordance with the time, sequence or completion requirements of the overall Project Construction Schedule, Subcontractor shall, at its expense, upon notice from Contractor, schedule such overtime work and make such increases in its working forces as Contractor may require in order for Subcontractor to promptly cure its failure to comply

with the overall Project Construction Schedule. If the progress of the Project or any component thereof is delayed, obstructed, hindered or interfered with by any fault, neglect, or failure to act of Subcontractor or any of its officers, agents, employees, sub-subcontractors or material suppliers so as to cause any additional cost, expense, liability or damage to Contractor or Owner, Subcontractor agrees to compensate Contractor and Owner for, and indemnify them against all such costs, expenses, liabilities or damages, including administrative costs and attorney fees.

5.3 Subcontractor shall not work hours outside the scheduled hours of the job without approval from Contractor, and Subcontractor agrees to pay any costs incurred by Contractor for supervision in the event such non-scheduled hours are worked.

5.4 If requested by Contractor, Subcontractor shall participate and cooperate in the development of the overall Project Construction Schedule and any revisions thereto. Subcontractor, in person or by a duly authorized representative having power to act and acceptable to Contractor, shall attend, at its own expense, all meetings or conferences that Contractor may call, at the Construction Site or elsewhere.

## **6.0 EXAMINATION OF DOCUMENTS AND INVESTIGATION OF SITE: CONCEALED OR UNKNOWN CONDITIONS.**

6.1 By its execution of the Agreement, Subcontractor represents that it has carefully studied and compared the Contract Documents with each other and with the Agreement and reported to Contractor any errors, inconsistencies or omissions discovered. Subcontractor shall also review carefully any changes in the Agreement or the Contract Documents and, within five (5) days after receipt of such changes, report to Contractor any errors, inconsistencies or omissions discovered. Subcontractor shall be liable to Contractor or Owner for damage resulting from errors, inconsistencies or omissions within or between the Contract Documents or the Agreement that Subcontractor in the exercise of reasonable diligence should have recognized and reported to Contractor.

6.2 Subcontractor represents that it has made such investigation and inspection (including, without limitation, any required by the Contract Documents) of the nature and location of the work and the conditions of the Construction Site (including, if relevant, the character of the surface and subsurface conditions or obstacles to be encountered on, under and around the Construction Site, access thereto, and storage and work areas available to Subcontractor thereon) as are necessary to determine the difficulty and cost to Subcontractor of properly performing Subcontractor's Work.

6.3 If conditions are encountered at the Construction Site that are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (b) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Subcontractor shall give Contractor written notice promptly before conditions are disturbed and in no event later than forty-eight (48) hours after first observance of the conditions. Subcontractor shall not be entitled to any increase in the Subcontract Amount or damages by reason of any such conditions, nor shall Subcontractor be entitled to an extension of the time for performance of Subcontractor's Work unless Owner grants such extension of time for the performance of Subcontractor's Work to Contractor pursuant to the requirements of the Contract Documents. Contractor shall not be obligated to apply to Owner for an increase in the Subcontract Amount or for damages on behalf of Subcontractor or for an extension of time under the Agreement unless such application is provided for by the Contract Documents and Subcontractor, at its expense, does all things necessary in order to process such claim. Contractor, upon receipt of any payment by Owner to Contractor based upon such claim for Subcontractor, will pay the same to Subcontractor less Contractor's expenses. Except to the extent provided in this Article 6.3, Subcontractor waives the right to make any claims based upon conditions (whether obvious, subsurface or concealed) encountered at the Construction Site.

## **7.0 PERMITS; LICENSES; COMPLIANCE WITH LAWS AND PATENTS.**

7.1 Subcontractor shall secure, pay for and keep in effect all licenses, permits and inspection certificates necessary for the proper execution and completion of Subcontractor's Work and shall deliver all certificates of inspection and other certificates and permits to Contractor.

7.2 Subcontractor shall comply with all laws, ordinances, codes, rules and regulations of governmental entities (including code and fire officials) having jurisdiction including but not limited to those relating to safety, health, discrimination in employment, fair employment practices or equal employment opportunity, and with the requirements of the Fire Underwriters with respect thereto.

7.3 Royalties and costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in Subcontractor's Work are included in the Subcontract Amount.

## **8.0 SHIPMENTS AND UNLOADING.**

8.1 Subcontractor in making or ordering shipments shall not consign or have consigned materials, equipment or any other items in the name of Contractor.

8.2 It is understood that all materials furnished under the Agreement are to be unloaded and stored/protected (if required) by Subcontractor. In the event that Subcontractor does not have facilities or labor to accomplish this, it will be done by Contractor and all charges in connection with same backcharged to Subcontractor. All deliveries and pick-ups must be made during regular working hours. All material consigned to Subcontractor must be clearly marked as such or it will be returned.

8.3 Any material furnished, but not installed under the terms of the Agreement, must be shipped prepaid, F.O.B. jobsite, to be unloaded by Contractor.

## **9.0 INDEMNITY.**

To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and hold harmless Contractor, GEM Inc., Affiliates of Contractor (as defined below), Owner (including their owners, affiliates and subsidiaries), and Owner's lender, their officers, directors, agents, shareholders, successors and employees from and against any and all claims, liability, actions, causes of actions, complaints, fines, penalties, costs, expenses (including prejudgment interest), and demands whatsoever, in law and in equity, including without limitation those for bodily injury, personal injury, sickness, disease, death or property damage (including, but not limited to, the Work itself), arising out of, or alleged to arise out of, or as a result of, or alleged as a result of (a) the performance of Subcontractor's Work or any act or omission of Subcontractor, its Sub-subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they may be liable; (b) the use, misuse, erection, maintenance, operation or failure of any equipment, tools or machinery (including, but not limited to, scaffolds, ladders, hoists, cranes, rigging supports, etc.) whether or not such machinery or equipment was furnished, rented or loaned to Subcontractor (or its Sub-subcontractors) by Contractor, Owner or any of their respective officers, employees or agents; or (c) failure of Subcontractor, its Sub-subcontractors or anyone directly or indirectly employed by them or for whose acts they may be liable, to comply with safety rules or regulations governing Subcontractor's Work. Subcontractor, at Subcontractor's sole expense, shall promptly dispose of all such claims, defend all lawsuits filed against Contractor, or Owner and Owner's lender, on the account thereof, pay all judgments rendered against Contractor, or Owner and Owner's lender, in such lawsuits (including any prejudgment interest assessed against any indemnitee hereunder), and reimburse Contractor, or

Owner and Owner's lender, in cash upon demand for all reasonable expenses incurred by Contractor, or Owner and Owner's lender, on the account thereof including, but not limited to, attorney fees, expert witness fees and court costs. Notwithstanding anything to the contrary contained herein, Contractor or Owner at its option shall have the right to participate in the defense of any claims asserted against it, approve the selection of counsel and approve the terms of any settlements made in its name or on its behalf. The obligations of Subcontractor hereunder shall be in addition to all indemnification obligations set forth in the General Conditions. With respect to any matter for which Contractor has been indemnified hereunder by Subcontractor, Subcontractor does hereby expressly and specifically waive its constitutional and statutory immunity from suit and causes of action provided to employers under the Ohio Constitution and Ohio Revised Code Section 4123.74 (and any and all subsequent amendments thereto), as well as any other similar immunity provided for by any statute, law or constitution of the State of Ohio or any other applicable state. The foregoing waiver is exclusively for the benefit of Contractor, Owner, and their respective employees, officers and related or affiliated companies and shall not extend to any other third parties. The term "Affiliates of Contractor" means a company or entity directly controlling or controlled by or under direct or indirect common control with Contractor. For the purpose of this definition, "control" means the possession of the power to vote at least fifty percent (50%) of the shares, membership interests or partnership interests of the entity in question.

## **10.0 BONDS.**

If requested in the bidding documents, Subcontractor, at its expense, shall keep in effect until final acceptance of Subcontractor's Work and thereafter until the expiration of Subcontractor's warranties provided in the Agreement, performance and labor and material payment bonds in the principal amount of the Subcontract Amount or such greater amount as is required by the Contract Documents naming Owner, Contractor and Owner's lender as co-obligees, with a corporate surety approved by Contractor, which bonds shall be on the standard forms furnished by Contractor.

## **11.0 SHOP DRAWINGS; DIMENSIONS.**

11.1 Subcontractor shall prepare and submit to Contractor such shop drawings as may be necessary to completely describe the details and construction of Subcontractor's Work. Submittals shall be made within the time periods specified by the Contract Documents or, if not otherwise specified, within thirty (30) days after the date of the Agreement. Review and/or approval of such shop drawings by Contractor and/or the Architect/Engineer shall not relieve Subcontractor from its obligation to perform Subcontractor's Work in strict accordance with the drawings, specifications and other provisions of the Agreement and the Contract Documents, nor of its responsibility for the proper matching and fitting of Subcontractor's Work with contiguous work and the coordination of Subcontractor's Work with other work being performed on the Construction Site, which obligation and responsibility shall continue until completion of Subcontractor's Work. Shop drawings shall be in conformance with Contract Documents, and shop drawings shall not supersede Contract Documents regardless of review and approval.

11.2 Subcontractor shall maintain full construction and design responsibility for work performed pursuant to "performance specifications" or any value engineering work performed by Subcontractor. Subcontractor shall maintain errors and omissions coverage for such work, and all drawings submitted by Subcontractor shall be stamped by a licensed or registered engineer or design professional.

## **12.0 EXTENSIONS OF TIME; DELAY DAMAGES.**

If Subcontractor is delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of Subcontractor's Work by any cause beyond Subcontractor's reasonable control,

including but not limited to any act, omission, negligence or default of Contractor or anyone employed by Contractor, or by any other contractors or subcontractors on the Project, or by the Architect/Engineer, Owner or their contractors, subcontractors, agents or consultants, or by damage caused by fire or other casualty or by the combined action of workers or by governmental directive or order and in no way chargeable to Subcontractor, or by any extraordinary conditions arising out of war or governmental regulations, or by any other cause beyond the reasonable control of and not due to default, neglect, act or omission of Subcontractor, its officers, agents, employees, sub-subcontractors or material suppliers, then Subcontractor shall be entitled to an extension of time for a period equivalent to the time lost by reason of any and all of such causes; provided, however, that Subcontractor shall not be entitled to any such extension of time unless (a) Subcontractor gives Contractor notice in writing of the cause or causes of such delay, obstruction, hindrance or interference within forty-eight (48) hours of the occurrence thereof, (b) Subcontractor demonstrates that it could not have anticipated or avoided such delay, obstruction, hindrance or interference and has used all available means to minimize the consequences thereof, and (c) Owner grants such an extension of time for the performance of Subcontractor's Work to Contractor pursuant to the requirements of the Contract Documents. Notwithstanding any extension of time, Subcontractor agrees that it shall not be entitled to, nor claim, any cost reimbursement, compensation or damages due to such delay, obstruction, hindrance or interference to Subcontractor's Work. Nothing contained in the foregoing paragraph shall be deemed or construed as waiving or precluding liability for, or otherwise waiving any remedy for, delay during the course of the Work when the cause of the delay is a proximate result of Contractor's act or failure to act.

### **13.0 WORK CHANGES.**

13.1 Within ten (10) days after a written request from Contractor (or within such other time as is specified in such request), Subcontractor shall submit to Contractor its proposal (with computations and supporting data in such detail as may be requested by Contractor) for eliminations of, changes in, and additions to Subcontractor's Work or for any deviations from the drawings and specifications or substitution of materials (including "or equal" materials) thereby requested.

13.2 On receipt of such proposal, Contractor may issue a written change order directing Subcontractor to proceed with the work, and Subcontractor shall proceed immediately with the work in accordance with each such change order.

13.3 No claim for extra work shall be made unless a written change order therefor in accordance with the provisions of this Article 13 is made prior to the execution of such extra work by Subcontractor. No amounts for overtime, premium time, acceleration, additional work or other costs shall be payable unless and until Contractor and Subcontractor execute a mutually acceptable change order detailing such amounts. In no event shall Subcontractor be permitted to include any markup or additional fee (whether in the form of profit, overhead or otherwise) to any overtime or other premium time approved in connection with any authorized changes in Subcontractor's Work.

13.4 After a change order becomes final, there shall be no subsequent adjustment based upon the effect or impact of the change contemplated thereby, nor shall Subcontractor be entitled to any further time or compensation based upon the cumulative effect or impact of multiple change orders, including any claims of lost profit or lost productivity.

13.5 It is agreed and understood that the amounts established as compensation for the work to be done under the Agreement are firm for the life of this Subcontract and are not subject to escalation in any form and may be amended only by a properly executed change order.

#### **14.0 SUBCONTRACTOR'S SCHEDULE OF VALUES.**

Prior to delivering its first progress payment application, Subcontractor shall deliver to Contractor a Schedule of Values, allocating the total Subcontract Amount to the separate phases of Subcontractor's Work, stating separately amounts for labor and materials and prorating equally overhead and profit among such separate phases. The Schedule of Values shall be subject to such adjustments as Contractor or Owner may require. Subcontractor from time to time shall deliver to Contractor for similar approval such supplements thereto as Contractor requires in order to reflect approved changes in the Subcontract Amount.

#### **15.0 PAYMENT.**

15.1 Contractor agrees to pay Subcontractor the Subcontract Amount for completing the Work, providing such Work as is completed is satisfactory to the Architect/Engineer or Owner, as applicable. Partial payment will be made each month in an amount equal to the value of Work done, and materials, either incorporated into the Project or stored, less the amount paid by Owner for the above work on previous estimates, less the amount of retainage indicated in the Agreement. Said monthly payments will be due and payable to Subcontractor within ten (10) days of receipt by Contractor of Contractor's monthly payment from Owner. If final acceptance of Subcontractor's Work can be obtained prior to final acceptance of the entire Project by Owner, all monies due Subcontractor will be paid within ten (10) days of receipt of same by Contractor from Owner, otherwise said payment will be made within ten (10) days of receipt of final payment by Contractor from Owner. Satisfactory receipt of payment by Contractor from Owner is a condition precedent to payment to Subcontractor.

15.2 Subcontract number must be shown on all invoices. Separate invoices are required in all instances which Subcontractor has more than one Agreement. Materials stored on or off-site must be documented by insurance coverage per Article 15.3, as well as copies of lower-tier invoices. Unless otherwise stipulated, all invoices in AIA format are due in Contractor's office prior to the 25th day of the month. All invoices shall be accompanied by a sworn statement that includes all Material Suppliers and all Sub-subcontractors that are supplying materials and/or services to the Subcontractor, as well as a full or partial unconditional waiver of lien from Subcontractor, as well as all listed Sub-subcontractors and Material Suppliers.

15.3 Payment will be made for materials stored off-site provided that a certificate of insurance has been furnished indicating coverage against fire, theft, loss or other damage to the stored material, and a statement is furnished indicating that the material is available for the Architect/Engineer or Owner's inspection, and that Owner has paid Contractor for same, subject to Article 15.2.

15.4 Subcontractor agrees to furnish any waivers, certificates, affidavits, warranties, guarantees, labor/material breakdowns, insurance data, including but not limited to Subcontractor's insurance policy, or other documents required by Owner or Contractor within ten (10) days of need for same. If such documents are not furnished within ten (10) days, Contractor may withhold payments currently due until such time as the documents are received.

**Proper insurance coverages as required by the Insurance Requirements attached as Schedule A to the Agreement, together with proper certificates on file with Contractor evidencing such coverages, must be in place prior to any work commencing on site. Commencing work without such insurance shall be considered a material breach of the Agreement.**

15.5 Subcontractor shall maintain accurate records with respect to all costs and expenses pertaining to Subcontractor's Work (whether original work or change order work), which records shall be kept in accordance with generally accepted accounting principles accurately applied. Contractor shall have the right to examine, copy and audit all such records, including, without limitation, invoices for equipment and materials, all payroll records setting forth wages, fringe benefits, pension, health and welfare contributions, union dues and similar contributions paid in connection with Subcontractor's Work. If it is determined that any such mandatory contributions or other payments have not been properly or timely made, or that Subcontractor has in any manner overstated its costs and expenses in connection with Subcontractor's Work, then Contractor shall have the right to withhold sufficient monies from the sums due Subcontractor to cover any deficiencies not rectified by Subcontractor, or, if there are no monies outstanding, Subcontractor shall pay on demand any amounts due under this Paragraph. This applies to all lower tier subcontracts, and shall be written into all such contracts. It is and will continue to be Subcontractor's responsibility to make the proper payments in a timely fashion.

15.6 Subcontractor agrees to furnish a list of all Sub-subcontractors, regardless of tier, and vendors within two (2) weeks of receipt of this Contract, and agrees to keep this list current; additions or deletions must be communicated to Contractor within two (2) weeks to allow Contractor to (a) know from whom to expect to receive wage reports, EEO reports, MBE/FBE reports, etc., and (b) know from whom to expect waivers of lien, affidavits, etc. Contractor reserves the right to approve Sub-subcontractors, regardless of tier, and to request resumes, work experience and other credentials of Subcontractor's proposed site supervisory personnel, and approve or reject without prejudice or cause.

15.7 Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owing by Subcontractor to Contractor. In the event of any breach by Subcontractor of any provision or obligation of the Agreement, or in the event of the assertion by other parties of any claim or lien against Contractor or Owner, or the premises, arising out of Subcontractor's performance of the Agreement, Contractor shall have the right to retain out of any payments due or to become due to Subcontractor an amount sufficient to completely protect Contractor from any and all loss, damage or expense therefrom, until Subcontractor has remedied the situation to the satisfaction of Contractor or Owner. If the situation has not been adequately remedied within a reasonable period of time, Contractor may make direct payment to the party asserting a claim or lien and all amounts so paid shall be deducted from any amounts owed by Contractor to Subcontractor.

15.8 Notice of Commencement may be attached to the Agreement, or may be sent upon request under separate cover, as it is received by Contractor. Subcontractor is required to serve copies of this Notice to their Sub-subcontractors and Materialmen, with return receipt requested. This clause must be included in all lower tier Sub-subcontracts and Material orders so that Contractor can be assured that all Sub-subcontractors and materialmen, regardless of tier, have received a Notice of Commencement. Contractor will furnish Subcontractor with affidavit, partial waiver and final waiver forms for use on this Project. No other forms are acceptable. If a lower tier Sub-subcontractor or Materialman files a lien that cannot be immediately discharged by payment because of a dispute, it shall be the responsibility of Subcontractor to bond off the lien at no expense to Contractor or Owner. Any legal expenses incurred by Contractor in connection with liens filed by Subcontractor or any of his lower tier Sub-subcontractors or Materialmen will be reimbursed by Subcontractor.

15.9 Subcontractor, by accepting final payment, waives all claims except those he has previously made in writing and that remain unsettled at the time of acceptance of said payment. Nothing contained herein shall be deemed or construed as waiving any pending or asserted claim on the basis

of final payment if, prior to final payment, Contractor has received from Subcontractor written notice of the pending or asserted claim.

15.10 No payment of the Subcontract Amount, whether a partial payment or the final payment, shall be deemed an acceptance of Subcontractor's Work covered thereby.

15.11 Contractor shall be entitled to deduct as a set-off to any money due Subcontractor any amount that Subcontractor or any of its affiliates (which term, for purposes hereof, shall include any individual, corporation, partnership, joint venture or other entity controlled by, controlling or under common control with Subcontractor) owes Contractor arising out of this Project, other projects, or otherwise.

15.12 Contractor, from time to time, may deliver to Subcontractor invoices for amounts owed (herein called charge-backs) to Contractor by Subcontractor pursuant to any provision of the Agreement, and Subcontractor shall pay the same not later than ten (10) days after delivery. Without limiting Subcontractor's obligation to pay the same as herein provided, Contractor may require the amount of any charge-backs to be deducted from the amount shown due to Subcontractor on its next payment application (progress or final) until paid in full. Any charge-backs remaining unpaid at the time of Subcontractor's final payment application shall be included as a deduction in such application. The amount of each charge-back shall bear interest at the rate per annum equal to two percent (2%) above the prime commercial rate announced from time to time by Key Bank, Toledo, Ohio, from the 10th day after the date of delivery of the invoice to Subcontractor until the date that the charge-back is paid.

## **16.0 FINAL PAYMENT.**

16.1 Subcontractor promptly upon completion of Subcontractor's Work shall deliver to Contractor its final payment application for amounts due and owing (exclusive of retention), which shall include a schedule of materials furnished and work done but not paid for (including amounts claimed due for additional and changed work) in prior progress payments and of all charge-backs owed to Contractor not theretofore paid or deducted from prior progress payments, and such detailed statements of payments by Subcontractor as Contractor may require. In addition, and as conditions precedent to final payment, Subcontractor shall furnish to Contractor (a) such sworn statements, materialmen's certificates and mechanic's lien waivers as Contractor deems necessary to protect Owner and Contractor against liens filed by Subcontractor's laborers and materialmen and Sub-subcontractors, regardless of tier, who have furnished labor, material, equipment and fuel in connection with Subcontractor's Work hereunder; (b) copies of all manuals, "as-built" drawings, warranties and guarantees required by the Contract Documents; (c) the written consent of Subcontractor's sureties to final payment, in form acceptable to Contractor; (d) certificates of such insurance as may be required hereunder; and (e) all other documents required by the Agreement or the Contract Documents.

16.2 Upon acceptance of Subcontractor's Work by Owner and after and subject to receipt of payment by Owner to Contractor of the balance so owed to Subcontractor, Contractor shall pay to Subcontractor the remaining net balance owed to it against receipt of Subcontractor's acknowledgment that said payment is in full for all sums owed to it under the Agreement, together with all other documents required hereby. The final payment (not including retention) shall be due within thirty (30) days after all of these express conditions have been met. Retention shall be paid within thirty (30) days of Contractor's receipt of retention from Owner.

## **17.0 PAYMENTS BY SUBCONTRACTOR; MECHANICS' LIENS.**



17.1 Subcontractor shall pay promptly, when due, its labor payrolls and sums from time to time owed by it to its subcontractors, equipment suppliers, materialmen, unions, taxing authorities (including, as applicable, all sales and use taxes) and other governmental entities. If Subcontractor does not pay the same as hereby required, Contractor, with notice to Subcontractor, may pay the same and charge the same together with expenses incurred by Contractor to Subcontractor.

17.2 To the fullest extent permitted by applicable laws, Subcontractor hereby expressly waives and releases any and all liens and lien rights against the property of Owner and/or Contractor to which it may be entitled under any act, statute, ordinance or other provision of law or equity. If any liens are filed with respect to the Project arising out of Subcontractor's Work, Subcontractor promptly shall cause the same to be removed, and if it does not do so within thirty (30) days after filing, Contractor may (a) take such action and make such payments as may be necessary or appropriate in order to remove such lien and charge the cost thereof together with all expenses incurred by Contractor to Subcontractor or (b) withhold from any amounts then or thereafter becoming due to Subcontractor an amount equal to twice the amount of the liens until such liens are fully satisfied or discharged.

17.3 Contractor shall have the right at its sole discretion to issue checks directly to any unpaid Sub-subcontractors of Subcontractor, equipment suppliers, materialmen, unions, taxing authorities and other governmental entities for amounts owed to them by Subcontractor relating to any application for payment from Subcontractor, or to issue joint checks to Subcontractor and such unpaid entities for such amounts. The amount of such payments shall then be deducted from the Subcontract Amount. No such payment by Contractor shall be deemed to create a contractual relationship between Contractor and any Sub-subcontractor, Supplier, Materialman or other third party claiming under Subcontractor.

## **18.0 CLEAN-UP AND PROTECTION OF WORK.**

18.1 Subcontractor at all times shall keep the Construction Site free from rubbish, debris and obstructions caused by its operations (including surplus materials, crates and packing, etc. brought to the Construction Site by Subcontractor or by others for the benefit of Subcontractor), and shall complete Subcontractor's Work in such manner as to permit the next succeeding work to start without further cleaning. At the time of completion of Subcontractor's Work in each area, Subcontractor shall leave the area "broom clean" and shall remove all of its tools, equipment, scaffolding and surplus materials.

18.2 Subcontractor shall not damage the work of others by its operations, and shall repair or pay the cost of repairing any such damage done by it.

18.3 Subcontractor shall diligently perform and protect its work in such a manner as to prevent water, moisture and other elements from entering or penetrating the building, building materials and walls or any specific areas within the building worked on, and shall take all precautions, using the best practices of the construction industry, to avoid unwanted moisture in building materials that could lead to the growth of mold, fungus, rot or other biological agents that could adversely affect the health of the Construction Workers or occupants of the completed Project or otherwise cause property damage.

## **19.0 INSURANCE.**

19.1 Before commencing work under the Agreement, Subcontractor shall furnish to Contractor policies or certificates as evidence of current coverages sufficient to meet the requirements set forth in the Insurance Requirements attached to the Agreement as Schedule A. Only certificates in the revised Accord format referenced in Schedule A will be acceptable. Failure to maintain insurance

required will be grounds for this Agreement's termination. The requirement of any insurance in the Agreement shall not be construed as being a limitation of Subcontractor's liability under the Contract Documents.

19.2 Payment will not be made to Subcontractor until and unless the aforementioned Insurance Certificates are on file in Contractor's main office.

## **20.0 TERMINATION WITHOUT FAULT OF SUBCONTRACTOR.**

20.1 Contractor shall have the right, at any time by written notice to Subcontractor, to terminate, at Contractor's convenience, without cause the Agreement and require Subcontractor to cease work hereunder. In the event of such termination, Subcontractor, as directed by Contractor, shall discontinue Subcontractor's Work, remove its equipment, materials and employees from the Construction Site and take such action as may be necessary to terminate its agreements with its Sub-subcontractors and Material Suppliers, and to minimize its losses resulting from such termination.

20.2 In the event the Agreement is terminated pursuant to Article 20.1, Subcontractor, promptly upon Contractor's written request, shall deliver to Contractor a statement covering the balance owed under the Agreement for work completed prior to the termination, additional costs for which it is liable by reason of such termination, and reasonable demobilization costs. If Owner is liable to Contractor with respect to the termination, Contractor, subject to its approval of Subcontractor's statement, shall include the same in its claim against Owner by reason of such termination. In no event shall Subcontractor be entitled to lost or anticipated profits on unperformed Work.

## **21.0 SUSPENSION BY CONTRACTOR FOR CONVENIENCE.**

Contractor may, without cause, order Subcontractor, in writing, to suspend, delay or interrupt Subcontractor's Work for such period of time Contractor may determine, up to a maximum of ninety (90) days, or such longer period of time as is provided for in the Contract Documents.

## **22.0 WARRANTIES; CORRECTION OF WORK.**

22.1 Subcontractor warrants and guarantees that all materials and equipment furnished under the Agreement shall be new unless otherwise specified, and that all of Subcontractor's Work will be of first quality, free from faults or defects in materials or workmanship, and in strict accordance with requirements of the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. If required by Contractor or Owner, Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty and guaranty is not limited by the provisions of Article 22.2. All special warranties and guarantees or manufacturers warranties and guarantees shall be assigned to Owner upon final completion of Subcontractor's Work.

22.2 Subcontractor shall promptly correct all of Subcontractor's Work rejected as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion of the Project and whether or not fabricated, installed or completed. Subcontractor shall bear all costs of correcting such rejected work, including compensation for Contractor's additional services made necessary thereby. Work rejected before final completion shall be corrected prior to final completion. In addition, for a period equal to the longest applicable warranty period covering the Work or any portion of the Work, but in no event less than one (1) year from the date of final payment by Owner to Contractor, or within such other period as is required by the Contract Documents, or within such period

of time as may be prescribed by law or by the terms of any applicable special warranty or guaranty required by the Contract Documents, if any of Subcontractor's Work is found to be defective or not in accordance with the Contract Documents, Subcontractor shall correct it promptly after receipt of notice from Contractor or Owner. The expiration of any guaranty or any obligation of Subcontractor to correct Subcontractor's Work shall not relieve Subcontractor of the obligation to correct, at its own expense, any latent defect in Subcontractor's Work or deficiencies that are not readily ascertained, including, but not limited to, defective materials and workmanship, defects attributable to the substitutions for specified materials, and substandard performance of any of Subcontractor's Work otherwise not in compliance with the Contract Documents. Following the correction or replacement of any of Subcontractor's Work as specified in this Article 22.2, the warranties provided herein shall be fully reinstated with respect to such corrected or replaced Subcontractor's Work, and Subcontractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship that are found within one (1) year after the date of correction or replacement or such longer period as set forth in the Contract Documents or in any special warranty or guaranty.

### **23.0 DISPUTES AND SETTLEMENT.**

23.1 Subcontractor, in connection with any disagreement by it involving interpretations of the Contract Documents, claimed inaccuracies, deficiencies and errors in the drawings and specifications, deductions from and additions to the Subcontract Amount and claims for additional time by reason of change orders, or for delays, or for additional costs or damages by reason of any act or omission of Owner or Owner's other contractors, shall proceed strictly in accordance with the administrative remedies provided with respect thereto in the Contract Documents, and Subcontractor shall be bound by the administrative determinations, arbitration awards and other final judgments arrived at in accordance with the provisions of the Contract Documents that are binding upon Contractor with respect to any such claims.

23.2 Subcontractor shall give Contractor adequate and timely notification with respect to any action that it desires Contractor to take on its behalf against Owner in connection with any such dispute, and shall reimburse and indemnify Contractor against any and all expenses in connection with the presentation of any such claim. Contractor, at its election, may require Subcontractor to deposit with it a reasonable sum of money to protect it against any such costs, and if any matter is to be submitted to arbitration and does not also involve Contractor, will designate such arbitrator as Subcontractor requests. If the matter in dispute is required to be submitted to arbitration under the provisions of the Contract Documents, Subcontractor shall be bound by the decision of the arbitrators as therein provided.

23.3 Either Contractor or Subcontractor may from time to time call a special meeting for the resolution of claims, disputes, or other matters in question between Contractor and Subcontractor that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Construction Site within five (5) work days following a written request therefor, which request shall specify in detail the nature of the dispute to be resolved at such meeting. The meeting shall be attended by representatives of Contractor, Subcontractor and any other party that may be affected in any material respect by the resolution of such dispute, which representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. Neither party may file a demand for arbitration against the other on account of any such dispute until a meeting has been called pursuant to the provisions of this Article 23.3 and the parties have been unable to settle the dispute, it being agreed that this shall be a condition precedent to the right to demand arbitration on account of any dispute.

23.4 If any claim, dispute or other matter in question arises between Contractor and Subcontractor with respect to interpretations of the Agreement, extra work or other changes in Subcontractor's Work ordered by Contractor, or other disputes involving delays or damages claimed by Contractor against Subcontractor or by Subcontractor against Contractor, and if any such claim, dispute or other matter is not resolved pursuant to Article 23.3, then, within a reasonable time after the conclusion of the settlement meeting as provided in Article 23.3, but in no event later than thirty (30) days after conclusion of the settlement meeting, then Contractor shall send written notice to Subcontractor specifying that the unresolved claim, dispute or other matter shall be resolved by one of the following methods: (a) litigation in a court of competent jurisdiction, or (b) arbitration pursuant to Article 23.5, or (c) such other dispute resolution procedures or administrative proceedings as may be required pursuant to Article 23.1. Any such election shall be in Contractor's sole discretion. Upon such election, either party may then commence the appropriate proceedings. If no election is made by Contractor, the unresolved claim, dispute or other matter shall be resolved by arbitration pursuant to Article 23.5.

23.5 If arbitration is demanded by either party in accordance with the preceding provisions, then the following requirements shall apply: (a) the arbitration shall be conducted in accordance with the then-prevailing Construction Industry Arbitration Rules of the American Arbitration Association, unless the parties mutually agree to the contrary in writing; (b) the decision made by the arbitrator(s) shall be final and binding upon the parties, and judgment may be entered upon such decision in any court having jurisdiction; (c) the arbitration shall be conducted in Walbridge, Ohio; (d) any arbitration may include, by consolidation, joinder or otherwise, any person or entity not a party to the Agreement if that person or entity is involved in a common question of law or fact, the presence of such person or entity is required if complete relief is to be accorded in the arbitration, and the interest of that person or entity is not insubstantial; (e) the agreement to arbitrate set forth in this Article 23.5, including, but not limited to, the agreement to arbitrate with other persons or entities, shall be specifically enforceable; (f) all claims that are related to or are dependent upon each other shall be heard by the same arbitrator(s); (g) Contractor shall have the right, at its sole option, to defer the arbitration proceedings until the completion of Subcontractor's Work, at which time all pending disputes for which arbitration has been demanded pursuant to this Article may be heard in a single proceeding; and (h) unless otherwise provided under the Construction Industry Arbitration Rules, the arbitrator(s) shall fix their own compensation and assess the costs and charges of the proceedings against either or both of the parties.

#### **24.0 DEFAULT BY SUBCONTRACTOR.**

24.1 If Subcontractor fails (a) to maintain a sufficient skilled work force, including supervisors, sufficient equipment in good working order, and site and offsite support to meet the requirements of Subcontractor's Work, or (b) to cause to be delivered to it at the Construction Site sufficient materials of the required quality to enable it to comply with its time and sequence schedule, or (c) to meet the requirements of such time and sequence schedules, or (d) to pay when due its laborers or its Sub-subcontractors or its Material Suppliers, fuel or equipment suppliers, unions, taxing authorities and other governmental entities or (e) to comply with any of its other agreements herein contained, for a period of forty-eight (48) hours after receipt of written notice by Contractor specifying the failure complained of, Contractor, at any time while such failure continues, by written notice to Subcontractor may terminate Subcontractor's right to proceed with Subcontractor's Work, in whole or in part.

24.2 If Subcontractor becomes insolvent, or makes an assignment for the benefit of creditors, or applies to any tribunal for the appointment of a trustee or receiver of Subcontractor or for any substantial part of its assets, or commences any proceedings relating to Subcontractor under any bankruptcy, reorganization, insolvency, readjustment of debt or liquidation law, or if any such petition or

application is filed and any such proceedings are commenced against Subcontractor and Subcontractor by any act consents thereto, or an order is entered appointing any such trustee or receiver or adjudicating Subcontractor bankrupt or insolvent or approving the petition in any such proceedings and such order remains in effect for more than thirty (30) days, or if an order is entered in any proceedings against Subcontractor decreeing its dissolution and such order remains in effect for more than thirty (30) days, Contractor, by notice to Subcontractor, may terminate Subcontractor's right to proceed with Subcontractor's Work, in whole or in part.

24.3 In the event of any such termination, Contractor shall have the right to notify Subcontractor's surety of any default by Subcontractor and to exercise any other rights or remedies available at law, in equity, or by statute. In addition, Contractor shall have the right to finish Subcontractor's Work by whatever method it may deem expedient, including, without limitation, the taking over of Subcontractor's outstanding subcontracts and purchase orders and taking possession of and using in completing the work, Subcontractor's tools, equipment, scaffolding, materials and supplies at the Construction Site or in transit to or connection with Subcontractor's Work.

24.4 In the event of any termination, Subcontractor shall not be entitled to any further payment until the entire Project shall have been accepted by Owner. At the time of acceptance, Contractor shall aggregate its cost of completion, and all damages resulting from such default, including, but not limited to, any liquidated damages provided for in the Contract Documents, attorney fees, expert witness fees and court costs, and other setoffs, as provided for in the Agreement ("Aggregate Costs of Default"). Upon delivery by Subcontractor to Contractor of appropriate waivers of lien and other documents required hereunder for final payment, Contractor shall pay to Subcontractor the excess, if any, of the balance of the Subcontract Amount less the Aggregate Costs of Default. If the Aggregate Costs of Default exceeds the balance of the Subcontract Amount, Subcontractor shall pay to Contractor such excess amount, promptly upon submission of an invoice for the same. Contractor shall have the right to withhold from any final payment a reasonable reserve to cover any unexpired warranties applicable to Subcontractor's Work.

## **25.0 ASSIGNMENT.**

Subcontractor shall not assign the Agreement without the written consent of Contractor, nor subcontract the whole or any part of the Agreement without the written consent of Contractor. Subcontractor shall not assign any amounts due or to become due under this Agreement without the written consent of Contractor. No consent to or acceptance by Contractor of any assignment or subcontract shall relieve Subcontractor of any of its responsibilities under the Agreement.

## **26.0 NOTICES.**

Except as otherwise specifically provided, all notices, requests, demands and proposals given hereunder by either party shall be in writing and (a) mailed by first class mail, (b) delivered in person, (c) sent by telecopy with confirmed receipt thereof, or (d) sent by a nationally recognized overnight courier service, if to Contractor, at its offices at the address shown on page one of the Subcontract, and if to Subcontractor, to the address stated at the beginning hereof, or in either case, to such other address as may be furnished for such purpose. Notwithstanding the foregoing, any notice by Subcontractor of a claim for additional costs, damages or extensions of time shall be made only by certified mail, return receipt requested, to Contractor at the address stated at the beginning hereof. Any notice given in the manner provided in this Article shall be deemed given when mailed, sent or delivered and shall be deemed received when actually received.

## **27.0 HEALTH AND SAFETY.**

27.1 Subcontractor and its Sub-subcontractors, regardless of tier, are required to ensure the health and safety of their workforce, and any other individuals exposed to hazards they create or become aware of, by establishing, implementing, and enforcing safety measures, policies and standards conforming to all applicable federal, state, local or other applicable regulations, including, without limitation, the regulations of the Occupational Health and safety Administration (OSHA). Subcontractor and its Sub-subcontractors must also comply with all safety standards of Contractor, which may exceed government imposed minimums in a number of areas, as well as any applicable Owner safety requirements, programs or facility regulations.

27.2 Contractor's requirements that exceed government minimums include, but are not necessarily limited to:

- a. Approved hard hats and safety glasses with side shields must be worn while in construction and other designated areas.
- b. Fall protection is mandatory for all trades and work processes at and above six feet.
- c. Shirts and long pants are required.
- d. Shirts with a minimum 3" sleeve length are required.
- e. Sturdy work shoes or boots are required, as a minimum, for foot protection.

27.3 The Subcontractor acknowledges that it has been provided an opportunity to inspect the Contractor's safety program documents and hereby certifies that it will comply with all elements of the program.

27.4 Subcontractor and its Sub-subcontractors shall comply with other reasonable safety rules and practices established by the Contractor or Owner prior to or during the work of the Agreement.

27.5 In the event of an injury or incident that requires off-site medical treatment, or results in property damage, the individual injured or responsible and any other individual involved in or associated with the incident will be required to submit to a drug/alcohol test immediately after the incident, but in no case later than the time limit listed in the applicable Substance Abuse Policy.

27.6 Contractor shall be immediately notified of any incident which requires off-site medical treatment, results in damage to property or equipment, and any theft or attempted theft.

27.7 Hazard Communication

- a. Subcontractors shall provide copies of MSDS for substances pertaining to their work scope to Contractor, prior to bringing the substance on-site.
- b. MSDS for all subcontractors on-site will be maintained in a central location, readily available for review by all personnel.

27.8 Subcontractor shall assume full and immediate responsibility for their actions, training requirements and compliance with all governing regulations concerning utilities, pipelines, or equipment-generated spills or contamination caused by Subcontractor.

27.9 Subcontractors shall complete and submit a Monthly Injury Summary Form, provided by the Contractor, with the monthly pay application. Failure to submit the Monthly Injury Summary Form may delay payment to Subcontractor.

27.10 Upon request by Contractor, Subcontractor shall provide any safety information relating to Subcontractor's operations, including, without limitation, OSHA citations and logs, workers' compensation claims and other accident and claim records.

27.11 The Subcontractor shall develop a site specific safety plan which addresses the scope of work, anticipated hazards and measures to eliminate/minimize the hazards during the performance of the work. The plan must meet or exceed the requirements of the Contractor's safety program, and all applicable federal, state, local or other applicable regulations, as well as Owner safety requirements, programs or facility regulations. The safety plan shall be submitted to the Contractor for review prior to beginning work.

27.12 Subcontractor's are required to provide competent supervisors who have the authority and responsibility to implement and enforce safe work practices and behaviors as required by the Subcontractor's safety program, and the Contractor's safety program. Contractor reserves the right to remove any Subcontractor personnel including Supervisory personnel who are unable or unwilling to ensure compliance with the contractual obligation of safety provisions of the Agreement.

27.13 All Subcontractors and their Sub-subcontractors are required to perform documented Daily Pre-task Planning at the crew level.

## **28.0 APPROVALS.**

28.1 The Agreement is contingent upon and shall be valid only upon formal approval of Subcontractor and of the materials proposed to be used by him by the Architect/Engineer or Owner, if such approval is required.

28.2 By commencing work on-site or acceptance of payment, Subcontractor agrees, without exception, that all terms and conditions of this Agreement are accepted in their entirety, even if Subcontractor does not execute the Agreement.

28.3 The completed installation is to meet all prevailing codes and regulations.

28.4 All required permits, fees, inspections, compliance with environmental regulations and applicable licensing as required, as well as all safety and other governing requirements and standards, required in connection with the Agreement are the responsibility of Subcontractor.

28.5 Requests for substitution of materials must be made within thirty (30) days of receipt of this Subcontract, or sooner if stated in the Contract Documents, providing that the Contract Documents allow such substitution, and that all costs in connection with said substitution are borne by Subcontractor.

28.6 Subcontractor representative shall attend monthly EEO Compliance meetings held on-site by Contractor. Failure to attend with regularity shall subject Subcontractor to possible default. Subcontractor must comply with all EEO regulations pertinent to the Work.

**29.0 DIVISIBILITY.**

The provisions of the Agreement are divisible. If any provision of the Agreement is deemed invalid or unenforceable, this shall not affect the applicability or validity of any other provision of the Agreement.

**30.0 NON-WAIVER.**

The waiver by Contractor of any breach of any provision of the Agreement shall not be construed as, or constitute, a continuing waiver, or a waiver of any other breach of any provision of the Agreement.

**31.0 CONFIDENTIALITY.**

Subcontractor shall abide by all confidentiality provisions contained in the Contract Documents and/or any separate Confidentiality Agreement executed by either Contractor or Subcontractor in connection with the Project. Subcontractor shall keep confidential, and not use for any purposes outside of the Agreement, any and all information and data that Contractor or Owner may identify from time to time as confidential or proprietary (whether in printed, electronic or other form). Subcontractor shall be responsible for compliance of all confidentiality provisions by its officers, directors, shareholders, employees, consultants and sub-subcontractors, regardless of tier.

**32.0 RENTAL/USE OF EQUIPMENT.**

Contractor from time to time may, in its sole discretion, rent to or permit Subcontractor to use certain equipment to be provided by Contractor, such as scaffolding, forming equipment, tools or other equipment (collectively, "Contractor Equipment"). Contractor does not warrant or opine as to the condition or applicability of use and it is the responsibility of Subcontractor to determine the safe condition and applicability prior to using any Contractor Equipment. Subcontractor agrees that it will only allow trained individuals to use/access any Contractor Equipment. Statements made regarding training and qualifications of Subcontractor's employees will be considered factual and Subcontractor shall be liable for the actions of its employees. The indemnity in Article 9 hereof shall apply to Subcontractor's use of any Contractor Equipment.

**33.0 ENTIRE AGREEMENT.**

The Agreement constitutes the entire agreement between the parties hereto and supersedes any and all prior or contemporaneous written or oral agreements between the parties hereto with respect to the subject matter hereof. The Agreement may not be amended or modified except by a written change order duly executed by the parties hereto.