1. **CONTRACT BASIS:** These terms and conditions, together with the purchase order to which these terms are attached or incorporated (the "Purchase Order"), the Exhibits (as defined below) and any other documents incorporated herein or therein by reference, (collectively, the "Subcontract"), represents the entire agreement between the buyer (the "Contractor") and the seller (the "Subcontractor") named on the Purchase Order, and supersedes any prior oral or written agreements or representations. Subcontractor certifies it is fully familiar with all terms of this Subcontract, the location of the job site, and conditions under which the work is to be performed and that it enters into this Subcontract based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor.

All documents forming the agreement between Contractor and Contractor's customer (the "Owner") are hereby incorporated by reference and Subcontractor agrees to be bound to those terms and conditions insofar as applicable to its work, so that Subcontractor shall have the same duties and obligations to Contractor as Contractor has to Owner.

This Subcontract and the agreement between Owner and Contractor, (the "Owner-Contractor Agreement") are intended to supplement and compliment each other and shall, where possible, be thus interpreted. If however, any provision of this Subcontract conflicts with the Owner-Contractor Agreement, the provision imposing the greater duty or obligation on Subcontractor shall govern.

Any objections or questions pertaining to the Subcontract or the Owner-Contractor Agreement must be raised in writing before acceptance. No such objection or exception shall constitute a waiver or modification of the Subcontract unless accepted in writing by Contractor.

2. **WORK TO BE PERFORMED:** Except as otherwise provided herein, Subcontractor shall furnish all labor, materials, tools, construction supplies, equipment, supervision and services necessary to properly prosecute and complete the work identified and described in the Purchase Order, in accordance with the Subcontract and the Owner-Contractor Agreement ("Work"). Subcontractor represents it is experienced and qualified to perform the Work and is properly equipped, organized, financed and, if necessary, licensed and/or certified to execute the Work.

3. **SUBCONTRACT PRICE:** Contractor shall pay Subcontractor, solely out of funds received from Owner, for the full and complete performance of the Work, the Subcontract Price specified on the face of the Purchase Order.

A. The Subcontract Price shall not be adjusted unless the Contractor is entitled to and receives a corresponding adjustment in its contract price under the Owner-Contractor Agreement with respect to the Work; or

B. the Subcontract Price is adjusted by changing order as a result of changed work as provided in Article 7 below; or

C. the Subcontract Price is adjusted by change order issued by the Contractor, with or without consent of Subcontractor, as permitted under this Subcontract.

Subcontractor shall promptly give written notice of any claim for adjustment of the Subcontract Price under this Article within the time limits provided in Article 7 below and in time to permit the Contractor to comply with the requirements of the Owner-Contractor Agreement.

The Subcontract Price includes all pension, welfare, vacation, annuity and other union benefit contributions payable in connection with the Work, and all taxes of every kind that have been or may be imposed, levied, or assessed by any governmental authority with respect to the Work, including taxes for labor, materials and equipment utilized in connection therewith and all sales, use, personal property, excise and payroll taxes. Upon request by Contractor, Subcontractor shall furnish satisfactory evidence of payment of such contributions and taxes.

If the Owner is a tax exempt entity and chooses to make direct purchase of materials and/or equipment, Subcontractor shall provide a detailed list of all materials and equipment necessary for the Work, including itemized costs with applicable sales and use taxes separately stated. In the event Owner makes such direct purchases, then, unless otherwise stated in a written amendment to this Subcontract, Subcontractor remains responsible for (a) selecting the materials and equipment, (b) approving the purchase orders in writing, (c) coordinating and ensuring the timely acquisition and delivery of the materials and equipment, (d) receiving, unloading and inspecting the materials and equipment to ensure conformance with the contract documents, and (e) installing the materials and equipment.

4. **PAYMENTS:** Before any payments are made, Subcontractor shall submit to Contractor a schedule of values of the various portions of the Work, including quantities if required by Contractor, which shall be in the customary form and supported by such data as Contractor may direct and which shall be subject to Contractor's approval, to enable Contractor to prepare a schedule of values for the entire project for which the Work is a part (the "Project"). Each scheduled item shall include its proportionate share of Subcontractor's overhead and profit. Subcontractor warrants that the line item amounts in the schedule of values submitted by Subcontractor shall be accurate and truthful.

As a condition precedent to any payment to Subcontractor, Subcontractor shall submit completed waivers, releases and sworn statements from Subcontractor and all sub-subcontractors, material men and laborers complying with requirements of applicable construction lien laws and such other evidence as may be required by Contractor, Owner, or Owner's lender to substantiate payment.

The obligation of Contractor to make payment under this Agreement, whether a progress or final payment, or for extras or change orders to the Work is subject to the express condition precedent that Owner has paid Contractor for the Work. If Contractor has provided payment or performance bonds or combination payment and performance bond, the obligation of Contractor and its surety under any of those bonds to make payment (whether a progress payment or final payment) to a claimant is similarly subject to the express condition precedent of payment therefor by Owner.

Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owed by Subcontractor to Contractor under the Subcontract or owed by any parent, subsidiary or affiliate of Subcontractor under any other contract with Contractor, or any parent, subsidiary or affiliate of Contractor.

A. **PROGRESS PAYMENTS**: Unless the Owner-Contractor Agreement provides for a different schedule, on or before the 27th day of each month, Subcontractor shall submit to Contractor an itemized progress estimate, supported by such data as Contractor may require, showing the estimated value of work completed as of the 25th day of that month, based on Subcontractor's approved schedule of values and on the conditions for payment under the Owner-Contractor Agreement including, without limitation, conditions relating to material delivered to and suitably installed to satisfaction of Contractor on the Site. Such estimate shall be used in the preparation of Contractor's application for payment to the Owner under the Owner-Contractor Agreement. If Subcontractor does not submit an itemized progress estimate by the 25th of the month complying with this Subcontract, the Contractor may, at its option, include an estimated amount in its application for payment for the Work of Subcontractor, or not include Subcontractor's Work in its application for payment until the following month.

Provided all conditions to payment have been met, Contractor shall pay Subcontractor within sixty (60) days of receipt of payment from the Owner for the Work invoiced, and conditioned upon receipt of payment from the Owner, an amount equal to the value of Subcontractor's completed Work, to the extent allowed and paid by the Owner on account of Subcontractor's Work, less all previous payments, the retainage of ten (10%) percent or equal to the amount or percentage in the Owner-Contractor Agreement, and any amounts withheld by the Contractor.

If, during the course of the Work, the Contractor determines the balance of the Subcontract Price then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, no additional payments will be due Subcontractor under this Subcontract unless and until Subcontractor, at no cost to the Contractor, performs, and pays in full for, a sufficient portion of the Work so that such balance of the

Subcontract Price then remaining is determined by the Contractor to be sufficient to so complete the Work.

Contractor may withhold payment to Subcontractor on account of (1) the failure of Subcontractor to comply fully with any requirements of this Subcontract, including the failure of Subcontractor to pay for material or labor; (2) the failure of Subcontractor to prevent the filing of liens or claims or to avoid the reasonable probability of the filing of liens or claims against the Project, the Owner, the Contractor or Subcontractor; (3) defective work not remedied; (4) damage to another subcontractor by reason of acts or failure(s) to act of Subcontractor; (5) claims of the Contractor, Owner or any other person against Subcontractor arising out of or in any way connected with the Work. In addition to the foregoing, Contractor, at its option, may retain from monies owing by it to Subcontractor sums as are necessary to indemnify it against loss or liabilities for which Subcontractor is liable under this Contract or any other contract between Contractor and Subcontractor or contract between any parent company, subsidiary or affiliate of either party.

If any deficiencies are not properly corrected or remedied within five (5) days of written notice to Subcontractor, Contractor in its sole discretion shall have the right to retain and pay from any amounts otherwise due or thereafter to become due an amount sufficient to (1) pay any sub-subcontractor, laborer or supplier of Subcontractor directly and deduct the amount of such payment from the Subcontract Price; (2) satisfy, discharge or defend any claim of lien or any action brought to enforce any such claims; (3) make good any such non-payment, damage, failure or default; and (4) compensate Contractor and the Owner for and indemnify them against any and all losses, liability, damages, costs and expenses, including legal fees and disbursements, which may be sustained or incurred by either or both of them in connection therewith. Contractor shall have the right to apply and charge against Subcontractor so much of the amount retained as may be required for the foregoing purposes. If the amount is insufficient therefor, Subcontractor shall be liable for the difference and pay the same to Contractor. Payment by the Contractor to any sub-subcontractor, laborer or supplier shall not relieve Subcontractor of any obligations to the Contractor under this Subcontract, but shall be credited against amounts otherwise due Subcontractor

B. FINAL PAYMENT: Final Payment, consisting of the entire unpaid balance of the Subcontract price and retained amounts, made by the Contractor to the Subcontractor shall not become due and payable until the last of the following express conditions precedents are met:

1. full completion of the Work by Subcontractor;
2. acceptance of the Work by Contractor and Owner;
3. Contractor's receipt of Subcontractor's final invoice;
4. Contractor's receipt of satisfactory evidence that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work and that Subcontractor has not filed nor has the right to maintain, a lien against the Owner, the Contractor, Contractor's surety, if any, for the Project;
5. The return of all drawings, plans and specifications to the Contractor;
6. Delivery of all guarantees, warranties, bonds, premium freight costs, instruction manuals, as-built drawings and similar items required by the Owner-Contractor Agreement or this Subcontract; and
7. Release of retention and payment by Owner for the Subcontractor's Work.

The final payment will be made within sixty (60) days after all of these conditions precedents have been met.

Acceptance of Final Payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those identified in writing by the Subcontractor as unsettled in the final application for payment and not resolved.

If any payment or lien claim is outstanding at the time Final Payment is due, Contractor reserves the right, after five (5) days notice to Subcontractor to pay either directly or by joint check, any creditor, laborer, fringe benefit fund, tax agency, supplier or subcontractor of Subcontractor for any debt or liability incurred by Subcontractor, or to release any lien, arising out of, or in connection with the Work, and any such direct payment shall be considered payment to Subcontractor. Contractor shall also have the option to require Subcontractor to furnish satisfactory bond to indemnify Contractor and Owner against all liens and encumbrances against the Work or the Project.

5. **TIME OF COMMENCEMENT AND COMPLETION:** Unless the Purchase Order specifies otherwise, Subcontractor will begin the Work upon receipt of the Purchase Order.

Subcontractor understands that the Contractor may pay penalties if the Work is not completed according to the schedule in the Owner-Contractor Agreement and represents that it is prepared to prosecute the Work so as to allow the Project in its entirety to progress satisfactorily to Contractor and Owner and meet such schedule. Subcontractor understands that failure to keep these benchmarks and timelines will result in penalties to Subcontractor, which may be deducted from amounts owed or to become due over the life of the Subcontract.

Completion of the Work and its several parts within the time allotted for the Work under the Owner-Contractor Agreement is of the essence of this Subcontract. Therefore, Subcontractor agrees:

A. to timely provide at the Project Site the materials, equipment, labor and supervision necessary and to begin the Work upon Contractor's order to do so;

B. to perform the work and all its parts promptly, diligently and at such time and in such order and sequence as Contractor may direct and as is required for the best possible progress of the Work whenever such Work, or any part of it, becomes available, and coordinate the Work with other work being performed in accordance with the Project Schedule (defined below), as it may be revised from time to time, and any other scheduling requirements of this Subcontract;

C. to conduct its Work and perform all activities incidental thereto so as to facilitate and so as not to interfere with or delay the work of the Owner, the Contractor or other subcontractors on the Site;

D. to keep itself continually informed of the progress of the Project and to confer with Contractor so as to plan its Work in coordinated sequence with the work of Contractor and others;

E. if the Project is divided into parts, to perform Work in several or all parts simultaneously, if directed to do so by Contractor; and

F. to furnish sufficient forces, supervision, equipment and materials, at such times and for such periods, as will result in progress according to the progress schedule prepared by the Contractor pursuant to the Owner-Contractor Agreement (the "Project Schedule") or any modification of same. Contractor reserves the right to modify any such Project Schedule with respect to the required sequence or duration of the Work or any portion of the Work, and Contractor makes no representation that Subcontractor will be able to commence, prosecute or complete the work in accordance with any Project Schedule.

Subcontractor shall participate and cooperate in the development of the Project Schedule, providing information for the scheduling of the times and sequence of operations required for its work to meet Contractor's overall schedule requirements, shall continuously monitor the Project Schedule so as to be fully familiar with the timing, phasing and sequence of operations of the Work and of other work on the Project and shall execute the Work in accordance with the requirements of the progress schedule including any revisions.

Subcontractor shall furnish additional labor, expedite deliveries of materials and equipment, work overtime, additional shifts, holidays and weekends if directed to do so by Contractor. Contractor shall give at least twenty-four (24) hours written notice to Subcontractor prior to overtime. If Subcontractor has not caused the need for such measures through delay or default, which are addressed below, Contractor shall pay Subcontractor the actual costs incurred by Subcontractor to furnish additional labor, to expedite deliveries of materials and/or equipment, and the premium portion of overtime. All such costs shall be substantiated by invoices and time slips checked and approved on a daily basis by Contractor, subject to audit by Contractor.

If, however, the progress of the Work or of the Project is delayed by any act or failure to act of Subcontractor or any of its officers, agents, servants,

employees, subcontractors or suppliers, or if Subcontractor is in default of any obligation of the Subcontract and Contractor determines increased effort is required to maintain satisfactory job progress, then Subcontractor shall, in addition to all other obligations imposed by this Subcontract upon Subcontractor in such case, and at its own cost and expense, provide such additional labor, expediting, overtime, second shift or holiday and weekend work as may be necessary to make up for all time lost in completion of the Work and the Project due to such delay. Should Subcontractor fail to make up for the time lost by reason of such delay, Contractor shall have the right to cause other subcontractors to work overtime and to take whatever other action it deems necessary to avoid delay in the completion of the Work and of the Project, and the cost and expense of such overtime or such other action shall be borne by Subcontractor.

Except where such costs may be recovered from Owner, Subcontractor shall not be entitled to receive any amount for overhead or profit for acceleration of work or for any inefficiencies or loss of productivity and shall not assert any claim for such overhead or profit or damages due to loss of productivity or inefficiencies.

If Subcontractor fails to prosecute the Work causing delay in the progress of the Project or delay to the work of the Contractor or others, Subcontractor shall be liable for all loss and damages, including, without limitation, liquidated and consequential damages, if any, sustained by Owner, Contractor or other subcontractors. Unless Subcontractor gives written notice of such to Contractor within forty-eight (48) hours of the occurrence, Subcontractor shall also liable for delays in its Work due to causes beyond Subcontractor's control.

6. **EXTENSIONS OF TIME:** Should Subcontractor's Work be delayed as the result of (a) fire, flood, cyclone, tornado, hurricane, or other similar casualty; (b) war, insurrection, riot or civil commotion; (c) government act or regulation; (d) any other subcontractor employed by Contractor; (e) the Contractor or the Owner, and such condition was beyond the control of and unforeseeable by Subcontractor, the time of completion of such portion or portions of the Work directly affected by such delay shall, unless the Contractor elects to terminate the Subcontract as provided under Article 17, be extended by agreement of Contractor and Subcontractor. No such extension shall be granted unless Subcontractor, within forty-eight (48) hours of the occurrence of the cause of such delay, notifies Contractor in writing, that such cause has occurred and makes written application for the specific extension of time claimed to be necessitated by reason of such cause, in such form as may be required to allow Contractor to make claim for extension of time under the Owner-Contractor Agreement. Failure by Subcontractor to give notice of a claim within the time specified shall constitute a waiver by Subcontractor of such claim.

Subcontractor shall have no claim against the Contractor for an increase in the Subcontract Price or a payment or allowance of any kind based on any damage, loss or additional expense Subcontractor may suffer as a result of any delays in prosecuting or completing the Work, whether such delays are caused by the circumstances in the preceding paragraphs or by any other circumstances. It is understood that Subcontractor assumes all risks of delays in prosecuting or completing the Work, and the Contractor's only obligation concerning delays shall be to grant an extension of time under the conditions and for the circumstances in the preceding paragraph, when and to the extent allowed by the Owner, and Subcontractor shall have no claim for delay damages against Contractor or Owner.

Subcontractor agrees that it shall not be entitled to claim any cost reimbursement, compensation or damages for any delay, destruction, hindrance to the Work except to the extent that Contractor is entitled to corresponding cost reimbursement, compensation or damages from the Owner under the Owner-Contractor Agreement for such delay, obstruction, hindrance or interference, and then only to the extent of the amount, if any, which Contractor, on behalf of Subcontractor and regarding the Work, actually receives from the Owner on the account of such delay, obstruction, hindrance or interference.

7. **CHANGES IN THE WORK:** Contractor may, without invalidating the Subcontract or any bond given, make changes, additions and/or omissions in the Work as it may deem necessary, such changes, additions or omissions ("changed work") to be effective only upon Contractor's written order to Subcontractor. Subcontractor, prior to the commencement of such changed or revised work, or within three (3) working days of receipt of notice of the change, whichever is earlier, shall submit to Contractor written copies of any claim for adjustment of the Subcontract Price and/or Contract Time for such revised Work, in accordance with the applicable provisions of the Owner-Contractor Agreement and the unit prices in Exhibit E (if applicable).

Subcontractor's quotation proposing the increase or decrease in the Subcontract Price for the changed work shall include a detailed breakdown setting forth differences in quantity and value of labor and materials involved and such additional cost information as may be requested by the Contractor. The Subcontractor's mark-up for overhead and profit shall be the percentages set forth on Exhibit E (if applicable), unless the Owner-Contractor Agreement provides otherwise or provides for different percentage markups. If Subcontractor fails to submit a quotation within the time limits set forth in this Article, the Contractor may prepare an interim quotation with respect to the changed work proposing an estimated amount for the increase or decrease in the Subcontract Price for the changed work, and Subcontractor shall be bound by such estimate pending resolution of a final price and receipt of payment from the Owner for the changed Work

If Contractor and Subcontractor are unable to agree upon any adjustment for the changes and if, in the opinion of Contractor, the work must proceed before an agreement can be negotiated, Contractor will issue a written order to Subcontractor to proceed with the changes, and Subcontractor shall so comply. In such event, Subcontractor shall keep itemized daily records as to all labor, material, equipment, and supplies used in connection with such changes, and shall submit the records to Contractor on a daily basis. If Subcontractor fails to keep such records, all work shall be deemed to have been performed at Subcontractor's own expense. Contractor and Subcontractor shall attempt to negotiate a fair and reasonable lump sum for such changes and if an agreement cannot be reached, the matter may be referred to arbitration as provided elsewhere in this Subcontract.

If Subcontractor proposes to substitute a specified article, material or item of equipment with another product, unless the Owner-Contractor Agreement provides otherwise, Subcontractor shall: (a) assume responsibility for installation and coordination of the substitution with the requirements of the project requirements; (b) bear all costs incurred by Contractor, its other subcontractors and the Owner as a result of the substitution; (c) warrant that any redesign as a result of such substitution shall be free from errors and omissions and comply with all applicable codes, laws, rules and regulations; (d) warrant that the substitution will be fit for its intended purpose; (e) assume responsibility for any schedule impacts as a result of such substitution; and (f) comply with all other requirements of the Owner-Contractor Agreement for substitutions.

In no event shall Subcontractor proceed with changes in Work without a written order from Contractor to proceed. Contractor shall be under no obligation to pay for work performed by Subcontractor without a written Change Order issued by Contractor's purchasing department.

Subcontractor will have no claim against Contractor, Owner or any other representative, agent, subcontractor of Contractor or Owner, for any act or omission, event or circumstance, in the nature of claims for damages or additional charges resulting from changed working conditions, congestion, improper scheduling, improper contract management, or other like circumstances, in excess of the written, agreed upon Subcontract Price plus proper written Change Orders for extra work, unless such claim is submitted to Contractor's Project Manager in writing within five (5) days of the occurrence and the Owner increases Contractor's contract price or Contractor, acting in its sole discretion, agrees to such additional charge(s). Any claim of the type described in the preceding sentence, which is not the subject of written notification by Subcontractor to Contractor's Project Manager, shall be deemed waived by Subcontractor if not submitted within such five (5) day period.

Subcontractor expressly waives the right to seek or recover damages based on, or related to, the cumulative impact of changes.

8. **PROCEDURES:** Subcontractor shall strictly adhere to the procedures in Exhibit C.

9. **WARRANTY:** Subcontractor guarantees that the Work shall be free from defects and shall conform to and meet the requirements of the Owner-Contractor Agreement and the Subcontract and applicable code requirements and shall furnish any separate guarantee for the Work or portions of the Work as required. Subcontractor shall remove, replace and

repair at its own expense and at the convenience of the Owner any faulty, defective, damaged, or improper work, materials or equipment discovered within one (1) year or such longer period as may be specified in the Agreement Between the Owner and Contractor (or such longer period as may be specified in the Owner-Contractor Agreement or the Subcontract) from the date of acceptance by the Owner, the Contractor, or their respective agents or assigns. Without limiting but in addition to the foregoing, Subcontractor shall pay for all damage to the Project resulting from defects in the Work and all costs and expense necessary to correct, remove, replace and repair the Work and any other work or property which may be damaged in correcting, removing, replacing or repairing the Work.

Subcontractor's aforesaid guarantee shall cover all Work, whether or not any portion of the Work has been assigned or subcontracted by Subcontractor, except for those portions of the Work furnished by Contractor or Owner. If any portion of the Work is performed by sub-subcontractors, their written guarantee to the Owner covering their respective portions of the Work for the period specified shall be delivered together with Subcontractor's guarantee, to the Contractor. Subcontractor's and sub-subcontractors' guarantees shall expressly provide that they shall be enforceable directly by the Owner and shall run concurrently with the Contractor's guarantee to the Owner.

10. **INSPECTION AND DEFECTIVE WORK:** Subcontractor shall at all times provide sufficient, safe and proper facilities for the inspection of the work by Contractor/Owner (or any other designee of Contractor or Owner) and its authorized representatives in the field, at shops or at any other place where materials or equipment for the work are in the course of preparation, manufacture, treatment or storage. Subcontractor shall, within 24 hours after receiving written notice from Contractor to that effect, proceed to take down all portions of the work and remove from the premises all materials whether worked or not, which Contractor shall determine is unsound, defective or improper or in any way as failing to conform to this Subcontract, and Subcontractor, at its own expense and cost shall replace the same with proper and satisfactory working materials and make good all work damaged or destroyed by or as a result of such unsound, defective, improper or non-conforming work or materials or by taking down, removal or replacement of same. If Subcontractor shall not remove and replace such work within a reasonable time, Contractor may do so at the expense of Subcontractor.

11. **INSPECTION OF SITE:** Subcontractor represents that it has carefully inspected the Project Site and examined the Drawings and Specifications (as further described in Exhibit B) and other Subcontract documents and the applicable provisions of the Owner-Contractor Agreement and is familiar with and has satisfied itself as to the nature, location and amount of the work, Subcontractor's access to, and ability to perform the Work, local code requirements applicable to the Work and requirements of permits and inspections, safety and barricade requirements, the terms and conditions of applicable collective bargaining agreements, the terms of this Subcontract and all incorporated documents as well as the quality, quantity and availability of labor, materials, equipment and facilities and other items required for the performance of the Work and the limiting physical and other conditions which may be encountered in the performance of the Work, assumes all risks therefrom, and agrees that it enters into this Subcontract on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of Contractor or of the Owner, or of any of their respective officers, agents, servants or employees.

12. **SUB-SUBCONTRACTORS:** A sub-subcontractor is a person or entity who has a direct or indirect contract with Subcontractor to perform any of the Work. By an appropriate written agreement, the form of which shall be subject to the Contractor's approval, Subcontractor shall require each sub-subcontractor to assume toward Subcontractor all the obligations and responsibilities which Subcontractor, by this Subcontract, assumes toward the Contractor and Owner. The sub-subcontract shall strictly comply with the requirements of applicable provisions of the Owner-Contractor Agreement. The sub-subcontract shall require the sub-subcontractor to indemnify the Contractor and the Owner and their agents and employees pursuant to the terms of Article 16; shall require the sub-subcontractor to provide insurance coverage in the Subcontract, shall require the policies of the sub-subcontractor to waive all rights against the Contractor, Owner and Subcontractor for damages caused by fire and other perils to the extent covered by the insurance required to be maintained under the sub-subcontract or the Subcontract; and shall require the sub-subcontractor to furnish to the Contractor all warranties required by the Subcontract, the Owner-Contractor Agreement and the sub-subcontract. The sub-subcontractor shall be bound by all provisions of this Subcontract regarding payment, schedule, progress, delays and safety precautions.

Sub-subcontractor shall acknowledge and agree that upon termination of the Subcontract and upon the request of the Contractor, Subcontractor shall assign the sub-subcontract to the Contractor and sub-subcontractor shall continue to perform its work on the Project, provided, however, that upon such assignment, the Contractor shall be obligated to pay the sub-subcontractor for work performed after the effective date of such termination pursuant to the payment terms of the sub-subcontract.

Subcontractor shall submit to the Contractor for approval a list of the sub-subcontractors and suppliers whom Subcontractor intends to engage with respect to the Project. The list of sub-subcontractors and suppliers shall be delivered to Contractor prior to commencement of the work. Failure of the Contractor to object to a proposed sub-subcontractor or supplier shall not constitute a waiver of any of the requirements of the Subcontract. Subcontractor shall be fully responsible for the acts, failures to act, errors or omissions of all of its sub-subcontractors, suppliers and vendors, and their respective employees, and for the complete and proper performance of all work under each sub-subcontract.

Failure of Subcontractor to strictly comply with the foregoing requirements shall constitute a material breach of the Subcontract.

13. **INSURANCE:** If the Project is under a Contractor or Owner Controlled Insurance Program ("CIP"), the Contractor or Owner will provide coverages as specified in the CIP Manual that is made part of this Subcontract. Subcontractor will remain responsible to provide all required coverages not provided through the CIP. Enrollment in the CIP is mandatory, unless Contractor has notified Subcontractor in writing that its operations are excluded. Subcontractor shall be responsible for any desired coverage against damage or loss to its own materials, facilities, tools, equipment, scaffolds, bracing and similar items not covered by Owner's or Contractor's builder's risk or fire policy. In all cases, Subcontractor is responsible for all deductibles on builder's risk insurance claims submitted to Owner or Contractor, and other insurance programs, as specified in the CIP manual. Except as otherwise provided in the CIP, the Subcontract Price shall exclude the insurances provided by the CIP and the insurance costs will be subsequently deducted from the Subcontract Price in a deductive change order.

Subcontractor shall maintain and pay for insurance coverage of the types and with the limits in Exhibit D. Such coverage shall be maintained in form and with companies acceptable to Contractor and Owner and shall, in spite of the requirements of Exhibit D, meet the applicable requirements imposed by the Owner-Contractor Agreement and any governmental authority having jurisdiction over the work. Each policy of insurance shall name the Owner, the Contractor, the Architect, Engineer, and General Contractor as Contractor deems appropriate as additional insured's and shall provide for thirty (30) days notice of cancellation to Contractor. Certificates evidencing such insurance shall be delivered to Contractor prior to commencement of the work.

The Contractor and Subcontractor waive all rights against each other (and in the case of Subcontractor against the Owner and other subcontractors) for damages caused by fire and other perils to the extent covered by the insurance required by this Subcontract.

14. **SAFETY:** Subcontractor shall, at its own cost and expense, protect its employees and other persons from risk of death, injury or bodily harm arising out of or in any way connected with Subcontractor's work.

Subcontractor shall strictly comply with the Contractor's safety program for the project and the requirements in Exhibit G and with all safety policies and procedures of the Contractor and Owner.

Subcontractor shall strictly comply with all applicable statutes, regulations, orders, rules, requirements and standards of all governmental authorities having jurisdiction with respect to the Project, including without limitation, federal, state and local OSHA regulations, Right to Know requirements, Toxic and Hazardous Substances, Hazard Communication Standard, and Lead Standard. Subcontractor shall indemnify, defend and save the Contractor harmless from any liability, loss, cost, penalty, damage or expense, including attorneys' fees, which Contractor may incur as a result of

any claim, damage, injury, course of action, proceeding, citation, or work stoppage arising out of or in any way connected with any alleged violation by Subcontractor of any such statute, regulation, order, rule, requirement or standard.

15. COMPLIANCE WITH LAW

A. Immigration Laws. The Subcontractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of that Act prohibiting hiring and continued employment of unauthorized aliens, requiring verification and record-keeping with respect to identity and eligibility for employment, and prohibiting discrimination on the basis of national origin, United States citizenship, or intending citizen status. It is the Contractor's intention to allow only individuals authorized to work in the United States to provide labor, tools or equipment to the Project. Accordingly, during the performance of this Subcontract, the Subcontractor agrees to comply with all provisions of all local, state and federal immigration laws, statutes, rules, codes, orders and regulations, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, the Immigration and Nationality Act, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and any successor statutes, laws, rules and regulations thereto (collectively, the "Immigration Laws"). Subcontractor agrees to indemnify, defend, and hold harmless Owner and Contractor from any and all liability, including fines, attorneys' fees and court costs, assessed against Contractor or Owner due to noncompliance with the Immigration Laws by Subcontractor or any of its sub-subcontractors.

B. Equal Employment Opportunity And Labor Requirements:

i. Subcontractor will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, religion, age, disability, military or protected veteran status, height, weight, familial status, or marital status, or any other protected condition or characteristic in conformity with all applicable federal, state and local laws and regulations and will preserve the confidentiality of records regarding arrest, detention, or other disposition in which a conviction does not result. Contractor requires affirmative action to employ and advance employment of qualified protected veterans and individuals with disabilities. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 60-250.5, 60-741-5, 60.300.5(a), and 29 C.F.R. Parts 470 and 471, if applicable.

ii. Subcontractor shall develop and administer an effective labor relations program and employ, and require its subcontractors to employ, only compatible labor so the work of Subcontractor and all other contractors may proceed without labor disputes. Subcontractor shall be responsible for any work stoppages or union jurisdictional disputes and shall pay any additional expenses incurred by Subcontractor or Contractor or others as a result of any work stoppages or union disputes related to Subcontractor's Work.

iii. Subcontractor shall comply with all wage rates, reporting obligations, safety regulations and similar requirements established under the Owner-Contractor Agreement and by any governmental authority having jurisdiction. Any employee of the Subcontractor may be refused admittance to the Project Site or may be requested to leave the Project Site at any time by the Contractor and the Contractor shall not be required to have or state any reason for such action. In the event any employee of the Subcontractor is so barred from the Work, the Subcontractor shall immediately replace such employee with an employee satisfactory to the Contractor.

16. **INDEMNITY:** Except as otherwise provided in this Article 16, to the fullest extent permitted under the applicable law, and for and in consideration of the first one hundred ($100.00) dollars of the Subcontract Price, which Subcontractor agrees is adequate consideration, Subcontractor agrees to indemnify, defend and hold harmless the Contractor and the Owner and their agents and employees, and any other person or entity to whom Contractor owes indemnity, from and against any claim, injury, damage, cost, expense or liability (including reasonable attorneys' fees incurred in both defending the claim and tendering the claim to Subcontractor), to persons or property, whether arising before or after completion of the Subcontractor's Work, caused by, arising out of, resulting from or occurring in connection with the performance of the Work, violation of one or more applicable federal or state laws, statute, regulation, order, rule, requirement or standard or any activity associated with the Work or Work Stoppage, by the Subcontractor, its sub-subcontractors, suppliers or their agents or employees, or from any activity of the Subcontractor, its sub-subcontractors, suppliers or their agent or employees at the Site whether or not caused in part by the active or passive negligence or other fault of a party indemnified except only if caused by the sole negligence of a party indemnified hereunder. In the case of claims against the Contractor, the Owner, or their agents and employees or any other person or entity to whom Contractor or Owner owes indemnity by any employee of the Subcontractor, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

A. For work performed in Florida, the following indemnification clause shall apply: For and in consideration of the first one hundred ($100.00) dollars of the Subcontract Price, which Subcontractor agrees is adequate consideration, Subcontractor agrees to indemnify and/or hold harmless the Contractor and Owner from liability for damages to persons or property caused in whole or in part by any act, omission, or default of the Subcontractor arising from this Agreement or violation of one or more applicable federal or state laws. As used herein, the term damages shall mean any and all losses sustained by Contractor and Owner, including, but without limitation, any liens, judgments, claims, costs, attorney's fees, interest, incidental and consequential damages, lost profits, additional home office or project overhead, and/or professional fees. Notwithstanding the foregoing, the monetary limitation on the extent of this indemnification provided to the Contractor and Owner shall be in the amount of twice the subcontract amount or $5 million per occurrence whichever is greater. The obligations to indemnify under this agreement shall apply to all damages caused in whole or in part by any act, omission, of: (i) Owner, (ii) Contractor, (iii) Subcontractor, or (iv) any of Subcontractor's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. However, this indemnification shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the Contractor, Owner or their officers, directors, agents or employees, or for statutory violations or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Subcontractor or any of the Subcontractor's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. The provisions of Florida Statute §725.06 shall apply and to the extent that this paragraph is in any way inconsistent with that provision, that statute shall govern. In the case of claims against the Contractor, the Owner, or their agents and employees or any other person or entity to whom Contractor owes indemnity by any employee of the Subcontractor, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

B. For Work performed in Illinois, New York, North Carolina, Texas, Ohio, Delaware, Iowa, Kansas, Kentucky, Mississippi, Missouri and Colorado the following shall apply: To the fullest extension permitted under the applicable law, and for and in consideration of the first one hundred ($100.00) dollars of the Subcontract Price, which Subcontractor agrees is adequate consideration, Subcontractor agrees to indemnify, defend and hold harmless the Contractor and the Owner and their agents and employees, and any other person or entity to whom Contractor owes indemnity from and against any claim, injury, damage, cost, expense or liability (including actual attorneys' fees incurred in both defending the claim and tendering the claim to Subcontractor), whether arising before or after completion of the Subcontractor's Work caused by, arising out of, resulting from or occurring in connection with the performance of the Work, violation of one or more applicable federal or state laws, or any activity associated with the Work, by the Subcontractor, its sub-subcontractors, suppliers or their agents or employees, or from any activity of the Subcontractor, its sub-subcontractors, suppliers or their agent or employees at the Site whether or not caused in part by the active or passive negligence or other fault of a party indemnified except only to the extent caused by the negligence of a party indemnified hereunder. In the case of claims against the Contractor, the Owner, or their agents and employees or any other person or entity to whom Contractor owes indemnity by any employee of the Subcontractor, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages,

compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

C. The duty to defend stated in this Article (or elsewhere in the Subcontract) is independent and separate from the duty to indemnify and the duty to defend exists regardless of any ultimate liability of Contractor, Owner and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any indemnified party to the Subcontractor.

D. Within 60 days after learning of the assertion of any claim against which Contractor claims indemnification under this Subcontract, Contractor will notify Subcontrator and allow it to assume the defense or settlement of such claim at its own expense with counsel of its choosing. If Subcontrator assumes the defense or settlement of such claim, Contractor will cooperate Subcontractor and may join in the defense with its own counsel. If Subcontractor fails to assume the defense or settlement of such claim or to confirm its obligation and intention to assume the defense or settlement in writing to Contractor, Contractor may assume it at Subcontractor's expense. Subcontractor may not settle any claim without Contractor's prior written consent where the settlement involves a remedy other than or in addition to payment of money.

E. If any part of the foregoing indemnity provisions set forth in this Article is adjudged to be contrary to law, the remaining parts of the provisions shall, in all other respects, be and remain legally effective and binding. These indemnity provisions shall not be construed to eliminate or in any way reduce any other indemnification or rights which the Owner or Contractor has by law or through the Subcontract. These indemnity provisions shall not be construed to restrict, limit, or eliminate insurance coverage whether under the additional insured endorsements or otherwise.

17. **DEFAULT:** If Subcontractor (a) fails to supply the labor, materials, equipment and supervision in sufficient time and quantity to meet Contractor's Project Schedule as it may be modified; (b) causes stoppage or delay of or interference with the Project; (c) fails to pay its subcontractors, laborers, suppliers, material men and/or employees for Work on the Project promptly; (d) fails to pay workers' compensation or other employee benefits, withholding or any other taxes; (e) fails to comply with the safety provisions of the Subcontract or with any safety order, regulation or requirement of any governing authority having jurisdiction over this Project; (f) makes unauthorized changes in supervisory personnel; (g) fails in the performance or observance of any of the provisions of the Subcontract; or (h) files a voluntary petition in bankruptcy or is adjudicated insolvent; obtains an order for relief under Section 301 of the Bankruptcy Code; files any petition or fails to contest any petition filed seeking any reorganization or similar relief under any laws relating to bankruptcy, insolvency or other relief or debtors; or seeks or consents to or acquiesce in the appointment of any trustee, receiver or liquidator of any of its assets or property; make an assignment for the benefit of creditors; or makes an admission in writing of its inability to pay its debts as they became due, then Contractor, after giving Subcontractor written notice (or oral, confirmed in writing) of such default and forty-eight (48) hours within which to cure such default, shall have the right to exercise any one or more of the following remedies:

i. require that Subcontractor utilize, at its own expense, additional labor, overtime labor (including Saturday and Sunday work) and additional shifts as necessary to overcome the consequences of any delay attributable to Subcontractor's default;

ii. remedy the default by whatever means Contractor may deem necessary or appropriate, including, but not limited to, correcting, furnishing, performing or otherwise completing the Work, or any part of the Work, by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by Subcontractor) and deducting the cost from any monies due or to become due to Subcontractor;

iii. at Contractor's sole discretion, terminate the Subcontract, without thereby waiving or releasing any rights or remedies against Subcontractor or its sureties, and by itself or through others take possession of the Work, including, but not limited to all drawings, engineering calculations, material take-offs, materials, equipment, facilities, tools, scaffolds and appliances of Subcontractor relating to the Work, for the purposes of completing the Work and securing to Contractor the payment of its costs and other damages under the Subcontract and for the breach of same; and

iv. recover from Subcontractor all costs incurred by Contractor to complete the work plus a mark-up of 15% for overhead and profit, and further recover from Subcontractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential, and all reasonable attorneys' fees and other expenses suffered or incurred by Contractor by reason of or as a result of Subcontractor's default.

The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy in this Subcontract or now or hereafter at law or in equity.

After completion of the Work by the exercise of any one or more of the above remedies and acceptance of the Work and payment therefore by Owner, Contractor shall promptly pay Subcontractor the balance of the Subcontract Price, if any.

If Contractor elects to take possession of the Work, Subcontractor agrees to strictly and immediately comply with any instructions or requests of Contractor and Subcontractor further agrees to grant Contractor unhindered immediate access to its property, facilities and/or of its sub-subcontractors.

Subcontractor further agrees that its breach of any other agreement, contract, or subcontract between the Contractor and Subcontractor or any parent company, subsidiary or affiliate of either party pertaining to this or any other project or site shall be and constitutes a material breach of this Subcontract. Subcontractor specifically agrees that, as a material matter of inducement and consideration for the award of this Subcontract, upon such breach of any other agreement, contract, or subcontract, the Contractor shall be entitled to all its rights and remedies with respect to a breach of this Subcontract.

In no event shall Contractor be liable for anticipated profit of or incidental or consequential damages sustained by Subcontractor. Contractor shall not be liable for any penalty of any description.

18. **TERMINATION:** Contractor shall have the right to terminate, cancel or suspend performance of this Subcontract, in whole or in part, for any reason, upon at least forty-eight (48) hours written notice to Subcontractor. After receipt of notice of termination, Subcontractor shall terminate all Work under this Subcontract on the date specified in such notice and shall:

A. terminate all orders and subcontracts chargeable to the performance on this Subcontract which may be terminated without costs;

B. terminate and settle, subject to approval of Contractor, other orders and subcontracts where the costs of settlement will be less than the cost which would be incurred were such orders and subcontracts to be completed;

C. transfer to Contractor all materials, supplies, work in process, facilities, equipment, machinery or tools acquired by Subcontractor in connection with Subcontractor's performance and for which Subcontractor is reimbursed, and all plans, contract drawings, work drawings, sketches, specifications and information for use in connection therewith within (5) five working days or as directed by Contractor;

D. if directed by Contractor and to the extent stated in the notice, do such work as may be necessary to preserve the Work in progress and to protect material, plant and equipment on, or in transit to the Project Site. A schedule of all Subcontractors' proposed work to protect and preserve, if any, shall be submitted to Contractor for approval.

The Contractor will establish an exit strategy for demobilization of Subcontractor. Subcontractor shall be completely demobilized from site within (5) five working days or as directed by Contractor.

Upon termination of this Subcontract, in accordance with the provisions of this paragraph and upon compliance by Subcontractor with the provisions of the preceding paragraph, the Contractor shall pay Subcontractor in discharge of all obligations under this Subcontract without duplication and only for:

i. Such portion of the Work as Subcontractor and its sub-Subcontractors shall have completed, plus;

ii. The cost to Subcontractor of materials which have been delivered to the Project Site up to the effective date of termination, plus;

iii. The cost to Subcontractor of materials to be used in performance of this Subcontract for which bona fide, irrevocable orders have been placed by Subcontractor prior to the effective date of termination which have not been terminated and settled, provided that such materials are delivered to Contractor within a reasonable period after the effective date of termination, plus;

iv. The cost to Subcontractor of terminating and settling orders and subcontracts in accordance with this section, plus;

v. The cost to Subcontractor of complying with Contractor directions relative to the preservation of the work in progress and the protection of materials, plant and equipment on, or in transit to the Project Site;

The payment to be made for any such completed portion of the Work shall be in the proportion that the completed portion of the Work bears to the entire Work provided for in this Subcontract. However, the Contractor shall be under no obligation to compensate Subcontractor under the provision of this section if this Subcontract is terminated under Article 17 entitled "Default" or for any causes allowed by law. The sum of all amounts payable under this section, plus the sum of all amounts previously paid under this Subcontract, shall in no event exceed the total Subcontract Price. Such costs and expenses shall be subject to audit by Contractor or Owner.

In any and all subcontracts entered into between Subcontractor and its sub-subcontractors, and in any and all other commitments and obligations which Subcontractor may undertake or incur, all in connection with the Work, appropriate provisions shall be made to ensure the most reasonable terms in event of termination of this Subcontract by Contractor consistent with the provisions of this Subcontract.

The provisions in this Subcontract shall not limit the remedies granted to Contractor by this Subcontract or otherwise.

It is expressly understood that Contractor will not be obligated to compensate Subcontractor for:

a. any anticipated profits and overhead related to Work in this Subcontract not yet performed.

b. Any costs incurred due to Subcontractor's failure to terminate the Work on the effective date of termination.

c. Any order cancellation charges or fees levied upon Subcontractor for Subcontractor's failure to act promptly upon receipt of notice of subcontract termination or cancellation.

19. **REMEDIES IN THE EVENT OF BANKRUPTCY:** The Contractor and Subcontractor acknowledge and agree that successful completion of the Work within the time and financial parameters anticipated by the terms of this Subcontract, will require prompt and continued administration and performance by Subcontractor and other subcontractors and that any delay of same for any reason, including a bankruptcy proceeding respecting Subcontractor, would create immediate and irreparable harm to the Owner, the Contractor and the other subcontractors. To that end, this Subcontract contains a right to terminate upon bankruptcy of Subcontractor, it being recognized that such action would be necessary to avoid and minimize such delay and consequent damage to all concerned.

If, as a matter of law, the Contractor does not have the right due to a bankruptcy proceeding involving Subcontractor to exercise the remedies provided for in this Subcontract, then if Subcontractor, as debtor or its trustee, wishes to assume this Subcontract, it must do so within ten (10) days of the filing of the bankruptcy proceeding. In addition to curing or adequately assuring the cure of all Subcontractor's defaults existing under this Subcontract on the date of filing of the proceedings and thereafter, Subcontractor, as debtor, or its trustee, must also furnish adequate assurances of future performance under this Subcontract.

20. **PAYMENT RELIANCE:** Subcontractor acknowledges that it relies on Owner's credit and ability to pay, and not that of Contractor, for payment for Work performed. Subcontractor agrees that as a condition precedent to Contractor's obligation to make any payment to Subcontractor, the Contractor must receive payment from the Owner. If Contractor does not receive all or any part of the payment from the Owner in respect of Subcontractor's Work, whether because of a claimed defect or deficiency in Subcontractor's Work or for any other reason, the Contractor shall not be liable to Subcontractor for any sums in any respect. If Contractor incurs any cost or expense of any nature in preparing for the prosecution of, and prosecuting any claim against the Owner, whether by means of negotiations, arbitration or legal action, arising out of the Owner's refusal to pay the Contractor for Work done by Subcontractor, Contractor shall be entitled to deduct such costs and expenses from the amount due Subcontractor. Subcontractor agrees to cooperate with Contractor in any such dispute Contractor has with Owner, including testifying and providing documents.

21. **TAXES AND CONTRIBUTIONS:** Subcontractor shall fulfill and comply with all federal, state and local laws relating to employment of its employees, including, but not limited to: taxes, wages, hours, payroll records, reporting of wages, and payment of unemployment and disability insurance charges, social security taxes, equal employment opportunity requirements and all other responsibilities as a result of that employment. Subcontractor agrees to save Contractor harmless from all liability for such payments.

The Subcontract Price is inclusive of all taxes imposed by all laws, whether or not stated and charged separately, based upon labor performed, materials furnished and services rendered, including, but not limited to, sales tax, use taxes and personal property taxes levied and assessed against the Owner, Contractor and Subcontractor, arising out of the acquisition by Subcontractor of materials and equipment, and of any other kind of personal property, and out of the furnishing of labor and services in connection with the work done by Subcontractor and its sub-subcontractors. Where the law requires taxes to be stated and charged separately, the total of all items included within the work and the added tax shall not exceed the Subcontract Price stated herein.

22. **PERFORMANCE AND PAYMENT BONDS:** At Contractor's request, Subcontractor shall furnish Performance and Payment Bonds, each in the amount of one hundred (100%) percent of the Subcontract Price. The Performance and Payment Bonds shall be issued by licensed commercial sureties, in form and substance acceptable to the Owner and Contractor, shall be multiple obligee bonds in favor of the Owner, Owner's Lender, and Contractor and their respective successors and assigns, and shall be increased if the Subcontract Price increases. The premium for such bonds is included in the Subcontract Price.

23. **CONTRACTOR-SUBCONTRACTOR DISPUTE RESOLUTION:** Except as specifically provided for in subparagraph G of this Article 23, Contractor and Subcontractor intend to finally resolve all disputes arising under or related to the Subcontract, exclusively as per this Article. This Article shall remain effective even in the event of any bankruptcy petition, an assignment for the benefit of creditors, or any insolvency proceeding.

A. All disputes and claims relating to this Subcontract or the breach, termination or invalidation thereof shall, upon written notice, be referred to a senior management representative from each of the parties who will confer in good faith to attempt to resolve the matter. The party sending the first written notice (the "Initial Notice") shall (i) set forth in detail all of its claims or issues in dispute and (ii) designate a representative. The other party shall have 5 business days to designate its representative and add additional claims (if any) not identified in the Initial Notice. The representatives shall have 30 days from the date of the Initial Notice to resolve the identified issues, and they shall each use their good faith efforts to do so. If they are unable to do so, either party may refer the matter to mediation through the American Arbitration Association (AAA). Such mediation shall be started within 30 days from the date of referral and concluded within 30 days from the start date.

B. If the dispute or claim is not fully resolved pursuant to paragraph A, either party may, after 90 days, but not later than 120 days from the date of the Initial Notice, make a written demand for binding arbitration through the AAA by one arbitrator in accordance with its commercial arbitration rules. Judgment on the award may be entered in any court of competent jurisdiction. A party's failure to make a timely demand for arbitration shall result in the forfeiture of all claims and issues that party identified in its written notice.

C. Arbitration proceedings shall be conducted in Brown County, Wisconsin. Each party may depose one individual, limited to no longer than four hours. No other discovery shall be conducted except by the written agreement of both parties. All arbitration and/or mediation expenses shall be shared equally by the parties. However, each party shall bear the expense of its own counsel, witnesses, travel, and proofs. The arbitrator shall have no authority to award punitive or other damages beyond actual damages and shall not make any ruling or finding. The arbitration award shall be in

writing and specify its factual and legal basis. The right to appeal the award shall be governed by Wisconsin law, and such appeal shall be brought in a court of general jurisdiction located in Brown County, Wisconsin.

D. Either party may at any time, without inconsistency with the Subcontract and only to avoid irreparable injury, seek from a court of general jurisdiction located in Brown County, Wisconsin any equitable, interim, or provisional relief.

E. All statements made and documents provided or exchanged in connection with this dispute resolution process shall be confidential and neither party shall disclose the existence, content, or result of the dispute to third parties other than outside counsel, except with the prior written consent of the other party.

F. The provisions of this Article shall not modify or displace the procedures specified in Article 17, "Default."

G. This Article shall not apply to nor bar, any party's proprietary or intellectual property right claims.

24. **OWNER-CONTRACTOR ARBITRATION:**

A. Notwithstanding anything in Article 23, if the Contractor and Owner or others arbitrate matters relating to this Subcontract, Subcontractor shall be required, at the request of the Contractor, to prepare and present the Contractor's case, at Subcontractor's expense, to the extent the proceedings relate to this Subcontract.

B. Should the Contractor enter into arbitration with the Owner or others with regard to issues relating to this Subcontract, Subcontractor shall be bound by the result of the arbitration to the same degree as Contractor.

C. Wherever under the Owner- Contractor Agreement, the decision of the Owner or Owner's representative on any issue with respect to the Work is binding on the Contractor; said decision shall be binding also on Subcontractor.

25. **CONTRACTOR'S EQUIPMENT:** Subcontractor shall be responsible for all unloading, moving, lifting, protection, securing and dispensing of its materials and equipment at the Project Site. Subcontractor agrees that the Contractor's equipment and operators of such equipment will be available to Subcontractor only at the Contractor's discretion and only on the basis of established rates for charges therefore.

26. **CLEANUP AND REMOVAL OF DEBRIS:** Subcontractor shall perform its work as required so that the premises shall be neat, orderly and free from debris at all times. Upon termination or completion of its work, Subcontractor agrees to remove all unused materials and all equipment, utilities and facilities furnished by Subcontractor, to clean up all refuse and debris, and leave the premises clean, orderly and in good condition. Upon twenty-four (24) hours written notice of failure to comply with these provisions, the Contractor may elect to perform such cleanup of the Subcontractor's refuse, debris, etc., as the Contractor reasonably deems necessary and the cost of the same will be charged to Subcontractor plus 15% for overhead.

27. **ASSIGNMENT:** Except as provided in Article 12, Subcontractor shall not assign, transfer or further sublet this Subcontract, nor assign any monies due or to become due except with the prior written consent of Contractor. Any assignment of this Subcontract consented to by Contractor shall not operate to relieve Subcontractor of primary responsibility to Contractor for the due and full performance of this Subcontract, and Subcontractor shall be liable to Contractor for all acts and omissions of Subcontractor's subcontractors and assignees. Any such assignment or subletting without prior written consent of Contractor shall be void and of no effect.

28. **RIGHT OF SET-OFF:** In addition to any rights of set-off provided by law, all amounts due Subcontractor shall be considered net of indebtedness of Subcontractor and its subsidiaries to Contractor, Owner or their subsidiaries. Contractor may deduct any amounts due from Subcontractor or its subsidiaries to Contractor from any sums due or to become due from Contractor to Subcontractor pursuant to this or any other contract between Contractor and Subcontractor or any parent company, subsidiary or affiliate of either party.

29. **SPECIAL CONDITIONS:** Subcontractor shall comply with the special conditions in Exhibit F. If there is a conflict or inconsistency between any special condition and any other provision of this Subcontract, the special condition shall supersede such conflicting or inconsistent other provision and shall govern the rights and obligations of the parties.

30. **MISCELLANEOUS:**

A. Subcontractor shall obtain and pay for all necessary permits and licenses and comply with all statutes, ordinances, rules, regulations and orders of any governmental or quasi-governmental authority applicable to the performance of the work and be responsible for and correct any violations.

B. Subcontractor shall repair all damage to the Work or the work or property of others caused by Subcontractor and shall require all of its subcontractors and suppliers to be similarly obligated.

C. In making and ordering shipments, Subcontractor shall not consign nor have materials consigned in the name of Contractor. Contractor shall not consign nor have materials consigned in the name of Subcontractor. Contractor shall not make payments for charges on shipments made by and to Subcontractor, except at its option, in which case Subcontractor shall reimburse Contractor for such expense promptly.

D. Except as may otherwise expressly be provided, any notice required to be given pursuant to this Subcontract shall be provided in writing by personal delivery, email, or overnight courier to the party's address specified in this Subcontract, or to such other address that a party has notified the other party to be the address for the purposes of this paragraph D of this Article 30.

E. Contractor's waiver of any of its remedies for a breach by Subcontractor is without prejudice and shall not operate to waive any other remedies which Contractor shall have available to it, nor shall such waiver operate to waive Contractor's rights to any remedies for a future breach, whether of a like or different character.

F. Subcontractor hereby expressly warrants that it shall examine the work installed by others that affects Subcontractor's Work and that if any defects exist, Subcontractor shall immediately notify Contractor in writing and Subcontractor shall not proceed until such defects are corrected or Subcontractor is given written authorization to proceed signed by an officer of Contractor. If Subcontractor fails to give notice as required herein, Subcontractor shall be deemed to have waived any claim with respect to such defects.

G. This Subcontract shall be binding upon and shall inure to the benefit of the parties to this Subcontract and their successors and permitted assigns.

H. Except as provided in Article 3 with respect to back charges and adjustments to the Subcontract Price permitted under this Subcontract, this Subcontract may be amended only by a written agreement executed by both parties.

I. This Subcontract shall be null and void and of no effect if (1) Contractor and the Owner do not enter into and execute the Owner-Contractor Agreement, (2) Contractor is unable to commence its work on the Project due to causes beyond its reasonable control, or (3) Owner objects to Subcontractor. Contractor shall have no liability to Subcontractor under any theory of law or equity if this Subcontract is nullified or voided under this Section.

J. If any provision of this Subcontract (or application of same) is invalid or unenforceable to any extent, the remainder of this Subcontract (and other applications of same) shall not be affected as a result, and each provision of the Subcontract shall be valid and enforceable to the fullest extent permitted by law.

K. Unless provided otherwise by the Owner-Contractor Agreement, the Subcontract shall be governed and enforced in accordance with the laws of the State of Wisconsin, exclusive of the choice of law rules. Both Subcontractor and Contractor agree that resort to litigation in connection with this Subcontract shall only be submitted to courts of applicable jurisdiction

and venue located with the County of Brown, State of Wisconsin or the U.S. District Court for the Eastern District of Wisconsin. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Subcontract.

31. AUTHORITY: The party or parties signing the Subcontract or any Subcontract document on behalf of Subcontractor represents that he or she is duly authorized to execute the Subcontract on behalf of Subcontractor.

32. SENSITIVE DATA; DATA PROTECTION: To the extent Subcontractor comes in contact with individual personal data owned or otherwise held by Contractor as a result of performing under this Subcontract ("Data"), Subcontractor agrees to use such Data, if at all, only to the extent required to perform its obligations under this Subcontract, and to abide by the requirements of any federal, state and local laws that address the protection and/or use of such Data. Subcontractor must ensure compliance with data protection and cyber security requirements as established in the International Standard for Information Security (ISO 27001). This includes implementation of the necessary policies and procedures to safeguard protected information and data and imposing this requirement on Subcontractor's own vendors and contractors. Contractor reserves the right to audit Subcontractor's compliance and to terminate this Subcontract for cause if Subcontractor is unable or fails to comply.

33. **ENTIRE AGREEMENT:** This Subcontract and the incorporated documents constitute the entire agreement between the Contractor and Subcontractor and shall be and become a part of any purchase order by Contractor to Subcontractor as fully as though the terms of this Subcontract were written in said purchase order. No prior oral or written representations or agreements are valid unless expressly made part of the Subcontract.

34. **EXHIBITS:** The following Exhibits are attached to and made a part of this Subcontract :

Exhibit A - Bid Pricing Summary
Exhibit B - Scope of Work (includes applicable Drawings, Specifications, and other technical information included in Contractor's invitation to bid)
Exhibit C - Procedures
Exhibit D - Insurance
Exhibit E - Unit Prices and Markup
Attachments to Exhibit E:
Attachment 1: Allowable Pricing Format
Attachment 2: Labor Rate Breakdown Sheet
Attachment 3: Small Tools Attachment
Exhibit F - Special Conditions
Exhibit G - Envanio USA Inc. Project Safety & Health Program
Exhibit H - Site Manual and Clean Construction Manual