

## **GENERAL TERMS AND CONDITIONS FOR SUBCONTRACTS**

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### **1. DEFINITIONS**

1.1 "Contract" means all contract documents forming the agreement between the Purchaser and Owner.

1.2 "Owner" means the Owner, General Contractor, Construction Manager, or other entity with which Purchaser has a Contract.

1.3 "Purchaser and "Subcontractor" mean the entities identified as such in the Subcontract.

1.4 "Subcontract" means the Subcontract Agreement and related contract documents referenced therein.

1.5 "Work" means the services and materials to be provided by Subcontractor pursuant to the Subcontract.

### **2. SAFETY**

2.1 Subcontractor shall carry on its Work in a safe manner and in accordance with all applicable federal, state and local laws, ordinances and rules, and any and all safety requirements imposed by Purchaser and/or Owner. Subcontractor shall be solely responsible for the protection and safety of its employees and contractors, for the selection of all safety methods and safeguards, for required safety reports and records, for regular inspections of its work area and equipment, and for the instruction of its employees and contractors on health and safety issues.

2.2 Purchaser may deny access to the site by Subcontractor and/or its employees or contractors if, in Purchaser's sole judgment, such action is justified on the basis of safety. Purchaser may also suspend Work at any time or terminate the Subcontract for cause pursuant to Section 19.1 in the event of Subcontractor's failure to adhere to safety laws and regulations or Purchaser's or Owner's on-site safety procedures. The foregoing reservation of such rights shall not give rise to a duty by Purchaser to exercise such rights for the benefit of any person, and shall not relieve Subcontractor of its obligations for safety hereunder.

2.3 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by Subcontractor or anyone directly or indirectly employed by Subcontractor, then Subcontractor shall, prior to harmful exposure of any employees or persons on the site to such substance, give written notice of the chemical composition thereof to Purchaser in sufficient detail and time to permit compliance with such laws by Purchaser, Owner, other subcontractors, and other employers on site.

2.4 In the event that Subcontractor encounters on the site material reasonably believed to be hazardous materials, including, but not limited to asbestos or polychlorinated biphenyl (PCB) that has not been rendered harmless, Subcontractor shall immediately stop Work in the area affected and report the condition to Purchaser in writing. Work in the affected area shall resume in the absence of all hazardous materials or when such materials have been rendered harmless upon written agreement of Purchaser and Subcontractor.

### **3. PURCHASER'S CONTRACT WITH OWNER**

3.1 The Contract is incorporated herein by reference, and Subcontractor agrees to be bound by all of the terms and conditions of the Contract insofar as applicable to its Work, so that Subcontractor shall have the same duties and obligations to Purchaser with regard to Subcontractor's Work as Purchaser has to Owner under the Contract.

3.2 Subcontractor agrees to bind all of its subcontractors and suppliers to the obligations set forth in this Subcontract and the Contract insofar as applicable to the Work.

3.3 Upon execution of this Subcontract, Subcontractor shall not enter into any direct contractual relationships with the Owner or a third party related to this project without the express written authorization of Purchaser, and Subcontractor agrees that all communications with the Owner shall be made through Purchaser.

#### **4. CHANGES**

4.1 Purchaser may, from time to time during the progress of the Work, make changes in, additions to, or subtractions from the Work and/or the sequence in which Subcontractor is to perform the Work (hereinafter collectively referred to as a "Change" or "Changes") and Subcontractor shall comply with such Changes in accordance with all of the terms and conditions of this Subcontract.

4.2 In every case a Change shall be made by written change order or work authorization executed by Purchaser. No Purchaser employee has authority to authorize a Change other than by written change order or work authorization. In no event shall Subcontractor proceed with changed or extra work without a fully executed change order or work authorization from Purchaser. Purchaser shall not be liable for any additional costs incurred or delays encountered in the performance of such work without such prior written authorization. Any work undertaken by Subcontractor without a written change order or work authorization shall be undertaken by Subcontractor at its sole risk and expense.

4.3 If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of the Work, the subcontract price shall be increased or decreased by the reasonable cost of the Change as hereinafter computed, or an extension of time shall be granted, or both. Notice requirements and calculation of any compensation or schedule change shall be governed by Section 5, below.

#### **5. CLAIMS**

5.1 If Subcontractor claims that it is entitled to any extra compensation or damages because of any change order, work authorization, instruction, request or direction given to Subcontractor by Purchaser, by drawing or otherwise, or because of any act or failure to act by Owner, its agents or contractors, or Purchaser or any party for whose actions Purchaser is responsible, or for any other cause, whether such claim is made pursuant to contract or in tort or any other legal theory, Subcontractor shall deliver written notice to Purchaser that Subcontractor intends to make a claim within ten (10) days after the occurrence of the event giving rise to the claim or within three (3) business days less than the time period specified by the Contract, whichever is less. Subcontractor waives each and every claim and releases Purchaser and Owner from liability therefor for which no written notice is timely delivered pursuant to this section. If the event giving rise to a claim is a continuing one, a single notice from Subcontractor shall be sufficient, but Subcontractor waives the claim and releases Purchaser and Owner from liability to the extent that the commencement of a continuing event precedes the delivery of notice to Purchaser by more than ten (10) days. Written notice shall include a description of the event giving rise to the claim, an explanation of the reason why Subcontractor believes it is entitled to compensation, and sufficient documentation in support of the claim to enable Purchaser to evaluate its merits. Delivery means actual receipt by Purchaser. Pending resolution of a claim, Subcontractor shall proceed with the Work.

5.2 Should any such claim for extra compensation or damages arise from any act or neglect of Owner, its agents, or from any contractor employed by Owner other than Purchaser, or from any other cause not initiated by Purchaser, Subcontractor shall be entitled only to such extra compensation or damages or portion thereof which Purchaser is able to recover from Owner, its agent or contractor for Subcontractor's work. Purchaser shall present Subcontractor's properly supported claim to Owner, its agent or contractor. In no event shall Purchaser be liable for such extra compensation or damages in an amount greater than is obtained from Owner, its agent or contractor in respect to Subcontractor's claim.

5.3 Should any such claim for extra compensation or damages not covered by Section 5.2 arise from any instruction, request or direction given to Subcontractor by Purchaser, by drawing or otherwise, or from any act

or failure to act by Purchaser or any party for whose actions Purchaser is responsible, Subcontractor shall accept as full payment for such claim for extra compensation or damages, if any, its reasonable direct cost of materials f.o.b. the work site, the cost of direct labor (workmen and foremen) necessary to incorporate such materials into the Work, the additional direct costs of Subcontractor's subcontractors which would be compensable to Subcontractor pursuant to this section, plus five percent (5%) of the total of the foregoing enumerated costs as complete compensation for all of Subcontractor's overhead, profit, and any other costs of any character. In no event shall Purchaser be liable to pay Subcontractor any amount on account of indirect costs, profit, extended overhead, lost productivity, inefficiency or other or further incidental or consequential damages.

5.4 All of Subcontractor's charges for changed or extra work, regardless of the provision of these terms under which such charges are claimed, are subject to approval by Purchaser. In general, labor rates for such work (base wage and fringes) shall not exceed those stated in any applicable local trade union agreement for each classification. Subcontractor-owned equipment may be charged, if at all, only for the time actually used on Subcontractor's work. Equipment descriptions and hours used are to be recorded on daily time sheets. Subcontractor-rented equipment shall be quoted at an hourly rate determined by dividing the four week rental rate by 160.

5.5 Purchaser shall not be liable to pay extra compensation or damages resulting from events beyond its control such as, but not limited to, inclement weather, labor disputes, acts of civil or military authorities, shortages of material or labor, fire or explosion.

5.6 Subcontractor hereby represents and certifies to Purchaser that all payment applications, change order requests, claims and other requests for payment submitted pursuant to the Subcontract shall be true and accurate to the best of Subcontractor's knowledge and belief. Upon request of Purchaser, or as required by the Owner, Subcontractor shall separately certify in writing the accuracy and truthfulness of each request for payment or claim submitted hereunder. Subcontractor shall defend, indemnify and hold harmless Purchaser from all allegations, penalties or damages arising from or related to Subcontractor's submission of a false or allegedly false claim within the meaning of The False Claims Act (31 U.S.C. §§ 3729-33) or any other similar statute, law or regulation.

## **6. DELAYS AND EXTENSIONS OF TIME**

6.1 All of the requirements of Section 5 are applicable to claims for extra compensation or damages resulting from delays.

6.2 Should Subcontractor be delayed at any time in the progress of the Work by any act or neglect of Owner, its agents, or by any contractor employed by Owner other than Purchaser, or by any cause other than those mentioned in Section 6.3 below, then the time of completion of Subcontractor shall be extended for the same period of time by which Purchaser's time of completion is extended pursuant to the Contract. Section 5.2 shall govern Subcontractor's entitlement, if any, to extra compensation or damages for such delay.

6.3 Should Subcontractor be critically delayed solely by Purchaser or by subcontractors of Purchaser other than Subcontractor, then, at Purchaser's sole option, Subcontractor shall be entitled to either: (i) an extension of time of completion of the same duration as the delay or (ii) compensation for Subcontractor's increased costs of performance resulting from the compression of Subcontractor's work schedule, or (iii) both. Under option (ii) Subcontractor's increased costs shall be computed by adding: the premium cost only of labor which would not have been performed on premium time except for the compression of the schedule; the direct rental cost of additional tools or equipment or the value of the use of such tools or equipment if owned by Subcontractor which are incurred as a result of the compression; and the additional direct costs of Subcontractor's subcontractors which would be compensable to Subcontractor pursuant to this section; plus five percent (5%) of the total of the foregoing enumerated costs as a complete compensation for all of Subcontractor's overhead, profit, or any other costs of any character, but in no event shall Purchaser be liable to pay Subcontractor any amount on account of indirect costs, profit, extended overhead, lost productivity, inefficiency or other or further incidental or consequential damages.

6.4 Any claim for an increase in the contract time shall set forth in detail the circumstances that form the basis for the claim including, at a minimum, the date upon which each cause of delay began to affect the progress of the work, the date upon which each cause of delay ceased to affect the progress of the work and the number of days' increase in the contract time claimed as a consequence of each such cause of delay. The Subcontractor shall provide such supporting documentation as Purchaser may require including, where appropriate, a revised construction schedule indicating all activities affected by the circumstances forming the basis of the claim.

6.5 Notwithstanding anything to the contrary herein, if liquidated damages are specified in the Contract, and Purchaser is required to pay any penalty or liquidated damages because of failure to complete within the specified time and said failure is the result of the Subcontractor's failure to perform this subcontract promptly and expeditiously, then Subcontractor will reimburse Purchaser for any penalty and/or damage so assessed and paid by Purchaser.

## **7. RISK OF LOSS AND INDEMNIFICATION**

7.1 Subcontractor assumes all risk of loss or damage to property, or of bodily injury, sickness, disease or death of persons used or employed on or in connection with the performance of its Work under this Subcontract, and of all loss or damage to property, or of bodily injury, sickness, disease or death of persons wherever located, resulting from or arising out of any action, omission or operation under this Subcontract or in connection with its Work under this Subcontract.

7.2 To the fullest extent permitted by law, Subcontractor shall protect, defend, indemnify and hold harmless Purchaser (including its officers, directors, affiliates, parent and subsidiaries, agents and employees of any of them) and any other person or entity which Purchaser has agreed to indemnify pursuant to the Contract from and against claims, liabilities, damages, losses and expenses, including attorneys' fees and including economic loss, loss of use or other damage, attributable to bodily injury, sickness, disease or death, or damage to property (other than Subcontractor's work itself) or attributable to any negligence or breach of contract by Subcontractor, arising out of or in connection with performance of Subcontractor's work under this Subcontract. This indemnification shall not apply to any liabilities, damages, losses or expenses to the extent arising from any wrongful act, error, omission, or negligence of the Purchaser occurring concurrently with that of the Subcontractor or contributing to any loss indemnified hereunder. This indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits, payable by or for Subcontractor or its subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.3 Should Owner or any other person assert a claim or institute a suit, action, dispute or proceeding against Purchaser involving the manner or sufficiency of Subcontractor's performance of the Work, Subcontractor and/or its sureties shall, upon written request of Purchaser, promptly assume the defense of such claim, suit, action, dispute or proceeding at Subcontractor's and/or its sureties' expense, and Subcontractor and/or its sureties shall indemnify and save harmless Purchaser (including its officers, directors, affiliates, parent and subsidiaries agents and employees of any of them) from and against any liability, loss, damage, or expense arising out of or related to such claim, suit, action, dispute or proceeding. In the event that Subcontractor undertakes the defense of Purchaser pursuant to any provision of this Section 7, Subcontractor shall employ counsel deemed suitable by Purchaser.

## **8. TAXES AND PERMITS**

Subcontractor shall pay all sales, consumer, use and all other taxes and obtain all necessary permits applicable to the Work under this Subcontract.

## **9. INSURANCE**

9.1 Subcontractor and each of its subcontractors shall maintain the insurance coverage specified in Section 9.2 below in force at all times during the performance of all Work including Extra Work and Change Order

work. Subcontractor hereby agrees that before commencing said Work, it shall present to Purchaser a fully executed Certificate of Insurance in the form attached to these Terms as Exhibit A, including all coverages and amounts as required by these Terms and Conditions, and including the specific language at the bottom of the Certificate in the "Description of Operations" and "Certificate Holder" boxes. At the option of Purchaser, Subcontractor shall also provide a certified copy of the insurance policies and all endorsements. Subcontractor is required to maintain the following minimum insurance coverages, requirements and endorsements:

- a. A thirty (30) day advance written notice in the event of cancellation, non-renewal or material change of any policy.
- b. Except as to Workers' Compensation, Employers' Liability and Professional Errors & Omissions insurance, Purchaser shall be named as additional insured on all policies. As respects Commercial General Liability, ISO Forms CG 20 10 and CG 20 37 or the equivalent (as approved by Purchaser) must be used. Purchaser, as an additional insured, shall have all the rights, coverages, and limits afforded the Subcontractor under the policies.
- c. For all insurance policies required or referenced in this agreement, Subcontractor agrees to waive and shall require all subcontractors of every tier to waive all subrogation rights on behalf of itself and its insurers (or in the alternative to secure the waiver of subrogation from its insurers) against Purchaser and all employees.
- d. Subcontractor's insurance is primary and any insurance maintained by Purchaser is considered excess and non-contributory.
- e. Cross liability or severability of interest clause (liability policies only).
- f. Liability insurance policies must be an occurrence based policy form, and not a claims made policy.
- g. Purchaser must approve the insurance companies and forms and all insurance companies shall maintain at all times a rating of A- VII or higher by A. M. Best. It shall be considered a material breach of this Subcontract if at any time before, during or after completion of the project as required in this agreement for Subcontractor or any of its subcontractor's insurance to be cancelled, non-renewed, reduced in coverage below that required in this agreement, or an insurance carrier's rating is reduced below an A- VII as rated by A. M. Best (and Subcontractor has not obtained qualifying alternative insurance from an approved carrier).

## 9.2 Insurance Coverages:

Type of Coverage: 1. Workers' Compensation, Employers Liability including an "all states endorsement" and, where an exposure exists, Federal Employers' Liability Act, U.S. Longshore and Harbor Workers Act, and Jones Act.

Policy Limits: State and Federal Acts - Statutory  
Employer's Liability - \$1,000,000

Type of Coverage: 2. Commercial General Liability including coverage for independent contractors, together with Product Liability and Completed Operations (extending for at least thirty six (36) months after completion of operations), Blanket or Broad Form Contractual, Personal Injury Liability, Broad Form Property Damage, Incidental Malpractice, Host Liquor Liability, Independent Subcontractors, and Blanket XCU.

Policy Limits:	\$2,000,000	General Aggregate
	\$2,000,000	Products-Comp/Ops Aggregate
	\$1,000,000	Personal & Advertising Injury
	\$1,000,000	Each Occurrence

Type of Coverage: 3. Commercial Automobile Liability including coverage for owned, non-owned, and hired vehicles.

Policy Limits: \$1,000,000 Combined Single Limit.

Type of Coverage: 4. Where an exposure exists (including but not limited to design, surveying, soils analysis, HVAC and fire protection systems, value engineering, approval of materials or equipment, specification of materials, approval of drawings), Professional Errors & Omissions Liability (can be claims made but must continue the insurance in effect from start of design work to 6 years after completion of project or provide tail coverage for a 6 year period following project completion). Exclusions for delay, and products manufactured, designed or provided and pollution shall be deleted (or alternative coverage obtained), and coverage shall be provided for liquidated or other contract imposed damages.

Policy Limits: \$1,000,000 Each Occurrence and Aggregate  
(Owner may raise amount at Purchaser's expense for higher exposures)

Type of Coverage: 5. Where the Subcontract involves work at airports and Subcontractor will be working in areas where aircraft are or may be present, Airport Premises Liability.

Policy Limits: \$10,000,000 Combined Single Limit (Bodily Injury and Property Damage).

Type of Coverage: 6. Where requested by Purchaser, "All Risk" Builders' Risk (including the perils of boiler and machinery, earthquake and flood) for physical loss or damage to the project while performing work under the Contract including materials and equipment on and off site and in transit if intended to become a part of the work. Subcontractor shall have any design exclusions deleted from the policy if Subcontractor is providing any design related services under this subcontract.

Policy Limits: Amount of Subcontract

Type of Coverage: 7. Umbrella / Excess Liability with following form coverage. Any additional exclusions not contained in the underlying general liability policy must be disclosed to and approved by Purchaser.

Policy Limits: \$5,000,000 Each Occurrence and Aggregate  
(Purchaser may increase this at Subcontractor's expense for higher exposures)

9.3 Purchaser reserves the right to require Subcontractor to obtain additional insurance coverages and endorsements at Purchaser's sole discretion and expense, according to the nature and location of Work to be performed by Subcontractor.

9.4 In the event any Work to be performed under this Subcontract is further sublet, Subcontractor will require the same insurance coverage, additional insured endorsements (General Liability: ISO Forms CG 20 10 and CG 20 37 version or equivalent) and limits from its subcontractors, and will require said subcontractors to certify insurance coverage to Purchaser (including at any time certified copies of all insurance policies and endorsements), prior to the commencement of any Work.

9.5 Notwithstanding any other provision of this Subcontract to the contrary, no officer, employee or agent of Purchaser is authorized to cause, suffer, or permit Subcontractor or any of its employees, guests, agents, subcontractors, or suppliers to commence or perform any Work or otherwise enter upon the project site unless and until all of the conditions of this Section have been conformed to and performed.

9.6 If Subcontractor shall fail to certify required insurance coverage to Purchaser as set forth above, before commencing Work hereunder, the Purchaser may, at its option and without waiving any rights under this Subcontract, 1) place insurance of the character, nature and limits described above to cover the operations of the Subcontractor, paying the premiums for the same and charging same to the Subcontractor, or 2) withhold any and all payments from Subcontractor until Subcontractor procures the required insurance. Purchaser's election not to pursue either of these remedies shall not be construed as a waiver of Subcontractor's obligation to procure insurance.

9.7 Purchaser, by requiring the foregoing minimum insurance coverages, will not be deemed to limit any of the other obligations or liabilities of the Subcontractor. Subcontractor shall be responsible to pay the full amount of any deductibles or self-insured portions of any coverages.

9.8 Subcontractor shall submit to Purchaser, within 24 hours, copies of all reports arising out of any injuries to its employees or those of any firm or individual to whom it may have sublet Work, or any property damages arising or alleged to have arisen on account of any Work done by Subcontractor or its subcontractors or agents under this Subcontract.

## **10. CONFIDENTIALITY**

10.1 During performance of this Subcontract, Subcontractor may have access to information that is considered confidential by Purchaser. This information may include, without limitation, technical know-how, technical specifications, software object code and source code, protocols, strategic business plans, results of testing, financial information, product information, marketing information, methods of operation, customer information, supplier information and/or compilations of data ("Confidential Information").

10.2 Subcontractor shall use such Confidential Information only for the purposes of and in performance of its obligations under this Subcontract. Subcontractor shall maintain the confidentiality of the Confidential Information in the same manner in which it protects its own confidential information of like kind, but in no event shall the Subcontractor take less than reasonable precautions to prevent the unauthorized disclosure or use of Confidential Information.

10.3 Subcontractor is permitted to disclose the Confidential Information to its employees and authorized subcontractors on a need to know basis only, provided that such employees and subcontractors have written confidentiality obligations to the Subcontractor that provide equivalent protection to the Confidential Information.

10.4 The confidentiality provisions of this Subcontract do not apply to information that is or becomes entirely in the public domain; was received lawfully from a third party through no breach of any obligation of

confidentiality owed to Purchaser or Owner; or was created by Subcontractor independently of its access or use of the Confidential Information.

10.5 Upon termination or expiration of the Subcontract, upon request Subcontractor shall return to Purchaser or destroy the Confidential Information. Subcontractor shall not use the Confidential Information for its own or any third party's benefit. Subcontractor's confidentiality obligations shall survive the termination or expiration of this subcontract for so long as the Confidential Information remains confidential.

## **11. SOFTWARE LICENSE**

11.1 If Subcontractor's performance of this Subcontract includes the furnishing of computer software, Subcontractor grants to Purchaser a nonexclusive, paid-up, perpetual, worldwide, irrevocable license to:

- (a) compile, load and execute on computers and/or servers and/or other computing technology, the object code of the software furnished to Purchaser under this subcontract ("Software");
- (b) develop its own computer software utilizing, based upon, and/or integrating the Software ("Derivative Works");
- (c) integrate the Software and Derivative Works in Purchaser's products, and distribute or sublicense the Software and/or Derivative Works as integrated into Purchaser's products for sale as a unit to third parties ("Purchaser's Customers");
- (d) use the Software to provide technical support services to Purchaser's Customers;
- (e) reproduce copies of the Software as reasonably necessary to exercise the rights granted to Purchaser under this Subcontract;
- (f) use the Software to create the usual and customary documentation for Purchaser's Customers and distribute such documentation to Purchaser's Customers; and
- (g) use, copy and distribute any documentation related to the Software.

## **12. INTELLECTUAL PROPERTY**

12.1 Subcontractor warrants to Purchaser that it is the owner or licensee of all patents, copyrights and other intellectual property embodied in or furnished as part of Subcontractor's performance of this Subcontract. Subcontractor agrees to defend, hold harmless, and indemnify Purchaser and its customers against all claims, demands, losses, suits, damages, liability and expenses (including license fees and attorneys' fees) arising out of any suit or claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or mask work right by reason of the manufacture, use, or sale of the goods or services to be furnished or performed under this Subcontract, or for the actual or alleged misuse or misappropriation of a trade secret resulting from Subcontractor's actions.

12.2 Subcontractor agrees that all discoveries, designs, inventions, improvements, and other intellectual property rights whether copyrightable, patentable or not which are written, conceived, discovered or made by Subcontractor's employees or subcontractors in the performance of this Subcontract shall be promptly disclosed to Purchaser and shall become Purchaser's sole property. Subcontractor further agrees to sign and execute all assignments and other papers necessary to vest the entire right, title and interest in such discoveries, designs, inventions, improvements and other intellectual property to Purchaser and do all other lawful acts Purchaser may reasonably request relating to such intellectual property rights.

## **13. WORK SCHEDULE**

13.1 Time is of the essence of this Subcontract. All Work under this Subcontract shall be arranged and carried out by Subcontractor in such a manner that the Work will be completed by the completion date specified in this Subcontract including changes thereto pursuant to Section 4 or extensions of time granted under Section 6. Failure of Subcontractor to keep its Work in such a state of progress which will permit the Work to be completed by the specified completion date shall be a material breach of this Subcontract.

13.2 Should Subcontractor neglect or refuse, in the opinion of Purchaser, to supply a sufficiency of properly skilled workmen or of materials of proper quality, or fail in any respect to prosecute the Work with promptness and diligence, or fail in the performance of any of the terms and conditions contained herein, in addition to any other legal or contractual remedies available to it, Purchaser may:

- (1) Direct Subcontractor at its sole expense to work such additional hours including overtime or furnish additional labor, materials, tools or machinery as may be necessary in Purchaser's sole and final discretion to complete the Work by the specified completion date; or
- (2) Without any advanced notice to Subcontractor, provide any labor, materials, tools or machinery as may be necessary in Purchaser's sole and final discretion to complete the Work by the specified completion date and deduct the cost thereof plus ten percent (10%) of the total of such cost from any monies then due or thereafter to become due to Subcontractor under this Subcontract.

## **14. INSPECTION**

14.1 Subcontractor shall examine the contract site and shall inform and satisfy itself as to all matters necessary for the performance of its Work, including without limitation, general working conditions, labor requirements, accessibility, condition of the premises and, in particular, any pre-existing hazardous conditions such as toxic exposure due to lead paint, asbestos, hazardous materials, obstructions, drainage conditions, actual levels, excavating, filling and the like. Subcontractor agrees that it has taken all these matters into account in agreeing to the price, performance schedule and all other terms of this Subcontract. No allowance or extra payment shall be made to Subcontractor by Purchaser arising out of any such items or conditions.

14.2 Subcontractor shall be solely responsible for familiarization and understanding of Purchaser's work, material and equipment, and with special regard to their purpose, use, capacity, function, strength, imposed loads, duty cycle, ambient temperatures of operation, environment of operation, general operation, sequence of operation, objects to be handled in the system, vibration and complexities; and to be familiar with and understand all other work, material and equipment related to its Work and the work of Purchaser, Owner and/or other contractors. Any information presented by Purchaser or Owner is for reference only and the interpretation and understanding of such information is the sole responsibility of Subcontractor. Subcontractor acknowledges and agrees that the drawings and specifications indicate the general scope of the work but do not necessarily indicate all services, labor, materials or equipment required for the full performance and completion of the Work. Subcontractor agrees to furnish and install all items reasonably inferable from the Contract, Subcontract, and related Contract Documents for the proper completion of the work without adjustment to the Contract Price.

14.3 Purchaser and Owner shall, at all times, have access to the Work wherever it is, in preparation or in progress, and Subcontractor shall provide proper facilities for such access and for such inspection. Purchaser and Owner shall have such right to reject materials as set forth in the Contract, or in Purchaser's reasonable discretion. In no event shall any inspection, review, or approval by Purchaser or Owner relieve Subcontractor of or constitute a waiver of any obligation of Subcontractor.

## **15. TERMS OF PAYMENT**

15.1 Upon proper applications by Subcontractor, Purchaser shall make monthly progress payments to Subcontractor in such amount which, in the opinion of Purchaser, constitutes ninety percent (90%) of the value of the Work executed or materials in place at the jobsite less the aggregate of all previous payments and less deductions, if any, as herein provided; provided, however, that if the Contract provides for a different payment schedule, then such payment schedule shall control.

15.2 Subcontractor's affidavit executed on the form approved by Purchaser, and supporting waivers of lien from each of its subcontractors and material suppliers for the amount requested in their name, shall accompany all formal applications for payment. Subcontractor's waiver of lien for the net amount requested

waiver and release of claims form shall accompany the application. Purchaser is not obligated to make payments unless and until Subcontractor has complied with these requirements.

15.3 Purchaser will not make any payments to Subcontractor, including progress and final payments, unless and until Purchaser has been paid by Owner for Subcontractor's work. This clause covers both the timing of payment and, where lawful, is an express condition precedent to Purchaser's obligation to pay Subcontractor, such that Subcontractor bears the risk of the Owner's refusal or failure to pay Purchaser for Subcontractor's Work.

15.4 To the fullest extent permitted by law, Purchaser may deduct from or withhold any payment due Subcontractor on account of:

- (a) Unexecuted subcontract and/or failure to provide payment or performance bonds;
- (b) Defective Work not remedied;
- (c) Persistent failure to carry out the Work;
- (d) Inaccurate or incomplete applications for payment including affidavits and waivers;
- (e) Claims filed or reasonable evidence indicating probable filing of claims;
- (f) Failure of Subcontractor to make payments properly to its subcontractors or for material or labor;
- (g) A reasonable doubt that this Subcontract can be completed for the balance then unpaid;
- (h) Failure to properly staff the project;
- (i) Damage to other contractors working at the jobsite for which Purchaser may be liable;
- (j) Liens filed by Subcontractor's suppliers of material, labor or services;
- (k) Any amounts owed by Subcontractor to Purchaser on account of any other provision of this Subcontract or any other transaction between them; or
- (l) Any other reason related to the Work of Subcontractor or its subcontractors or suppliers.

15.5 Purchaser will make final payment of the balance due and retainage only when this Subcontract and all Changes, if any, are completed and accepted by Owner.

15.6 Acceptance of final payment by Subcontractor shall be a complete waiver and release of any and all claims of any nature and whether known or unknown against Purchaser and/or Owner arising out of or in connection with this Subcontract and/or the Work except for claims that were asserted in writing by Subcontractor prior to or simultaneous with Subcontractor's final payment application to Purchaser.

15.7 Purchaser reserves the right to make joint payments or direct payments to lower tier subcontractors, vendors, laborers or materialmen in the event that Subcontractor fails to make payment to them or liens are filed against the project due to nonpayment by Subcontractor. Any such joint or direct payment shall not breach or invalidate any portion of this Subcontract.

## **16. LIENS**

Neither partial nor final payment nor any part of the retainage shall become due until Subcontractor shall deliver to Purchaser a waiver of liens, claims for liens, and right to claim liens, arising out of this Subcontract (or an appropriate portion thereof in the event a partial lien waiver is required) and an affidavit that all labor and material has been paid for in full and that so far as it has knowledge or information the releases or waivers include all labor and materials for which a lien could be filed. If any lien should remain unsatisfied after all payments are made, Subcontractor shall refund to Purchaser all monies that Purchaser may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys' fees; in addition, Purchaser retains all rights it might have against Subcontractor for breach of its release and affidavit. Subcontractor agrees that it will indemnify and save Purchaser and/or Owner harmless from any and all costs and expenses, including attorneys' fees, associated with liens or claims of its subcontractors or any laborers, material suppliers, mechanics and/or other persons or entities directly or indirectly acting for, through or under Subcontractor, in connection with the Work.

## **17. WARRANTY; QUALITY OF MATERIALS AND WORKMANSHIP**

17.1 Subcontractor warrants the Work covered by this Subcontract on the same terms and conditions, and for the same period, as Purchaser warrants such work under the Contract. Subcontractor shall perform all warranty obligations and have all responsibilities assumed by Purchaser under the Contract.

17.2 If no warranty or guarantee is required of Purchaser in the Contract, Subcontractor shall warrant that the Work covered by this Subcontract will be free from defects in material, workmanship, equipment and design, and will conform to the requirements of all applicable specifications, drawings or other contract documents. Subcontractor shall correct, repair, replace and make good any defects in materials, workmanship, equipment or design for the period of two years from acceptance of the Work. If Subcontractor does not correct such defects, after notice, Purchaser may do so and Subcontractor will pay Purchaser all costs and expenses incurred in making such corrections.

17.3 Subcontractor shall execute any special warranties required by the specifications, drawings or other such contract documents prior to final payment.

17.4 All Work shall be done by persons qualified in their respective trades, and the workmanship shall be first-class in every respect. The Work shall be conducted in a competent and workmanlike manner and with regard for the safety of the workmen and protection of property. . All materials and equipment furnished shall be the best of their respective kinds for the intended use and, unless otherwise specified, same shall be new and of the latest design. Purchaser shall, in its sole discretion, make all decisions with respect to questions concerning the quality or fitness of materials, equipment and workmanship.

## **8. CONTROL OF WORK**

18.1 All questions concerning interpretation or the acceptable fulfillment of this Subcontract or specifications by Subcontractor or any other dispute shall be submitted in writing to Purchaser for determination. Pending resolution, Subcontractor shall proceed with the Work in accordance with Purchaser's instructions.

18.2 To the extent that design or engineering services are included in Subcontractor's Scope of Work, Subcontractor assumes all responsibility for the design and engineering of its Work and material. Approval of any drawings of its work by Purchaser, Owner, Owner's Representative, Architects, Engineers, or others shall not relieve Subcontractor of its obligations hereunder.

18.3 Purchaser reserves the right for itself and/or Owner to occupy any portion of the Work before it has been entirely completed, and Subcontractor agrees that such occupancy shall not constitute acceptance of the Work or any part thereof, or of any Work performed under this subcontract.

18.4 Subcontractor shall, unless otherwise specified, make initial lubrication of the machinery installed using the lubricant specified by Purchaser.

## **19. TERMINATION, CANCELLATION, AND SUSPENSION**

19.1 Termination for Cause: If Subcontractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should persistently or repeatedly refuse or fail, except in cases for which extension time is provided, to supply enough properly skilled workmen or proper materials, or fail in any respect to prosecute the Work with promptness and diligence, or if it should fail to make prompt payment to subcontractors or for material or labor, or interfere with the work of Purchaser or other subcontractors on the project, or allow a claim of lien to be filed against the project, or fail to comply with its defense and/or indemnification obligations under this Subcontract, or fail to furnish Purchaser with payment and/or performance bonds as may be required, or fail to furnish Purchaser with proof of insurance as required under this Subcontract, or disregard laws, ordinances, or the instructions of Purchaser or Owner, or fail to comply with the safety provisions set forth in Section 2 of this

Subcontract, or otherwise violate or breach any provision of this Subcontract, then Purchaser may, without prejudice to any other right or remedy, immediately terminate the right of Subcontractor to continue performance of this Subcontract, take possession of the premises and of all materials, tools and appliances thereon, and finish the work by whatever method it may deem expedient. Subcontractor shall not have the right to continue the work under this Subcontract by curing its default. Upon termination, Subcontractor shall not be entitled to receive any further payment until the Work is finished. If the cost of finishing the Work, including compensation for additional Purchaser or other managerial, administration and/or home office services, exceeds the unpaid balance of the Subcontract price, Subcontractor shall pay such excess to Purchaser. If Purchaser is later found to have wrongfully terminated this Subcontract, then the termination shall be automatically converted to a termination for convenience and Subcontractor shall be limited in its recovery strictly to the compensation provided for pursuant to Section 19.2 below.

**19.2 Cancellation or Termination for Convenience:** Purchaser may terminate or cancel any part or all of this Subcontract at any time for any reason and Subcontractor will immediately take all reasonable steps to minimize its costs. If the cancellation is for a reason other than described in Section 19.1, Purchaser shall pay Subcontractor for the cost of materials used and Work actually completed in conformity with this Subcontract and Work in progress or, if the cancellation/termination is by Owner, the amount recovered from Owner. Subcontractor shall deliver the completed material and Work in process in accordance with Purchaser's instructions. Not later than thirty (30) days after cancellation, Subcontractor shall submit its cancellation costs to Purchaser and any payment shall be made when Purchaser has received payment from Owner for same and following delivery of the material. Subcontractor shall not receive an allowance for unperformed Work or anticipated profits and Subcontractor's costs shall not include any charges in excess of five percent (5%) of the direct costs of the completed material and work in process; provided, however, that if the Contract provides for a different recovery by Subcontractor, then such recovery shall control. Subcontractor shall not be entitled to any claim or claim of lien against Purchaser or against Owner for any additional compensation or damages in the event of such termination / cancellation and payment.

**19.3 Suspension:** Purchaser shall have the right to suspend any part or all of Subcontractor's performance hereunder, as may be necessary or desirable for Purchaser's convenience or at the instruction of the Owner. If Subcontractor claims that extra compensation is due it because of such a suspension, the claim shall be presented pursuant to Section 5.

## **20. SUBCONTRACTS, ASSIGNMENTS, AND OTHER CONTRACTS**

**20.1** Subcontractor shall not subcontract or assign any portion of the Work without the written consent of Purchaser, nor shall Subcontractor assign any monies due or to become due it hereunder without the written consent of Purchaser.

**20.2** Purchaser reserves the right to let other contracts in connection with the Work and to do a portion of the Work itself. Subcontractor shall afford other contractors and Purchaser reasonable opportunity for the introduction and storage of their materials and the execution of their Work, and shall properly connect and coordinate its Work with theirs. If any part of Subcontractor's Work depends for proper execution or results upon the work of any other contractor, Subcontractor shall inspect and promptly report to Purchaser any defects in such work which render it unsuitable for such proper execution and results. Subcontractor's failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of Subcontractor's Work, except as to defects which may develop in the other contractor's work after execution of Subcontractor's Work.

## **21. DAMAGES**

If the Contract provides for liquidated or other damages for delay, Subcontractor shall be liable to Purchaser for all liquidated or other damages assessed by Owner against Purchaser in proportion to Subcontractor's share of responsibility for such delay. The proportionate assessment of liquidated or other damages shall not limit Purchaser's right to collect from Subcontractor any additional direct damages or losses

that Purchaser may incur, or be liable for, on account of any delay attributable to Subcontractor. In no event shall Purchaser be liable to Subcontractor for indirect or consequential damages (including but not limited to loss of profits) arising under any legal theory.

## **22. LAWS AND REGULATIONS**

Subcontractor shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations applicable to its Work under this Subcontract. If Subcontractor observes that any drawing, specification or other document is at variance with such laws, ordinances, rules or regulations, it shall promptly notify Purchaser in writing. If Subcontractor performs any Work knowing it is contrary to such laws, ordinances, rules or regulations and without notice to Purchaser, Subcontractor shall bear all costs necessary to correct the Work.

## **23. JOBSITE AND TOOLS**

23.1 Subcontractor will make and shall be deemed to have made a careful examination of the jobsite conditions, local labor conditions and all other matters that may affect the cost and time of completion of this Subcontract. Purchaser will not be obligated to pay claims for extra work or grant extensions of time because of such conditions or other matters which affect the Work, which Subcontractor could have anticipated by a careful examination of such conditions.

23.2 Subcontractor shall periodically and frequently during the progress of Work, remove and properly dispose of accumulations of dirt, debris, cartons and other items of rubbish as required to keep the site in a neat and clean condition and/or at Purchaser's direction.

23.3 Unless otherwise specified, Subcontractor will furnish all electric power, lighting, heat, water, sanitary facilities, field tools, hand tools, and miscellaneous installation material necessary to complete its Work.

23.4 Subcontractor shall continuously maintain protection of all its Work and materials from damage or loss and shall protect Owner's property from injury or loss arising in connection with this Subcontract. It shall make good any such damage, injury or loss, except such as may be caused by agents or employees of Purchaser or Owner. It shall adequately protect adjacent property as provided by law and the Contract.

23.5 Subcontractor shall keep on the jobsite during the entire progress of the work a competent Superintendent and necessary assistants all satisfactory to Purchaser and Owner. Such personnel as prove unsatisfactory to Purchaser or Owner shall be promptly replaced. Subcontractor's Superintendent shall be Subcontractor's agent for purposes of this Subcontract and may act on behalf of Subcontractor. Notice given to Superintendent or delivered to his or her office shall be deemed notice to Subcontractor. Subcontractor shall not remove or replace the Superintendent without Purchaser's written consent.

23.6 If it becomes necessary at any time during Subcontractor's Work to move materials or equipment, tools or supplies which have been temporarily placed, Subcontractor when so directed by Purchaser shall move them or cause them to be removed, without additional charge to Purchaser.

## **24. LABOR AND EQUAL EMPLOYMENT OPPORTUNITY**

24.1 Subcontractor shall abide by all labor agreements governing the job. Subcontractor shall not employ labor for installation which will cause labor disruptions with respect to the job. All labor problems are to be handled by Subcontractor, and Purchaser will not be subject to extra charges as a result of the outcome of any labor dispute.

24.2 Purchaser and Subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on

their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

## **25. CONSTRUCTION OF CONTRACT; DISPUTE RESOLUTION; PERSONAL JURISDICTION; WAIVER OF JURY TRIAL; WAIVERS; AGREEMENT**

25.1 This Subcontract is to be governed by and construed under the laws of the state of the principal place of business of Purchaser. If any provision of this Subcontract is deemed to be invalid or unenforceable under any statute, regulation, ordinance, executive order, or other rule of law, that provision shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of this Subcontract shall remain in full force and effect.

25.2 Any claim arising out of or related to this Subcontract that is not amicably resolved by the parties shall be subject to mediation as a condition precedent to litigation. The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Subcontract. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of litigation, but in such event, mediation shall proceed in advance of litigation, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held the nearest metropolitan area to Purchaser's principal place of business, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

25.3 Subcontractor consents to personal jurisdiction in the state of the Purchaser's principal place of business for any dispute arising hereunder. Subcontractor agrees that it shall not commence any lawsuit against Purchaser arising from or related to this Subcontract, or the project or Work contemplated by this Subcontract, including any changes thereto, except in either the federal or state courts located in the district in which Purchaser's principal place of business is located. Subcontractor must commence suit with respect to any claim arising from or related to this Subcontract, or the project or work contemplated by this Subcontract, including any actual or alleged changes thereto, whether such claim is made pursuant to contract or in tort or any other legal theory, within one (1) year of the occurrence of the event giving rise to the claim. Subcontractor's failure to comply with this contractual limitations period shall constitute a waiver of any such claim and Subcontractor shall be forever barred from asserting such claim. Any proceedings commenced in state or federal court arising in connection with this Subcontract shall be tried before and decided by the presiding judge without a jury and Purchaser and Subcontractor expressly waive any right to have such proceedings determined by trial by jury.

25.4 A waiver by Purchaser of any event of default shall not be deemed nor shall the same constitute a waiver of any subsequent event of default.

25.5 The terms and conditions contained in this Subcontract and the Contract are the entire terms upon which Purchaser is willing to contract with Subcontractor, and Purchaser specifically rejects any conflicting terms proposed by Subcontractor unless accepted by Purchaser in an executed writing. Said written terms, conditions, specifications and drawings constitute the entire agreement between Purchaser and Subcontractor and subsume and replace any previous agreements and negotiations.



## Exhibit A to General Terms and Conditions for Subcontracts

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
INSURER F :		

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b>						EACH OCCURRENCE \$
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
							GENERAL AGGREGATE \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$
	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						\$
	<input type="checkbox"/> NON-OWNED AUTOS						
	<b>UMBRELLA LIAB</b>						EACH OCCURRENCE \$
	<b>EXCESS LIAB</b>						AGGREGATE \$
	<input type="checkbox"/> OCCUR						\$
	<input type="checkbox"/> CLAIMS-MADE						
	DED <input type="checkbox"/> RETENTION \$						
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A						E.L. EACH ACCIDENT \$
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE