



GENERAL CONDITIONS FOR SUBCONTRACT

TABLE OF CONTENTS

Title	Article No.	Page No.
APPLICABLE LAW	25.0	7
ARTICLE HEADING	44.0	10
ASSIGNMENT	30.0	8
BACKCHARGE; OFFSET	46.0	10
CHANGES	9.0	3
COMPLETE AGREEMENT	45.0	10
COMPLETION OF THE WORK	12.0	4
CONFIDENTIALITY	24.0	7
CONTRACTOR'S RIGHT TO DO WORK	15.0	5
CONTRACTOR FURNISHED MATERIALS	37.0	9
CONTRACTOR INFORMATION	36.0	9
DAMAGES	42.0	10
DEFINITIONS	1.0	1
DISPUTES	40.0	9
EMERGENCIES	19.0	6
EQUAL OPPORTUNITY	50.0	11
FACILITY SITE	26.0	7
FORCE MAJEURE	39.0	9
GENERAL INDEMNITY	29.0	8
GOVERNING LAW AND VENUE	43.0	10
HAZARDOUS MATERIALS	35.0	8
INDEPENDENT CONTRACTOR	48.0	11
INTELLECTUAL PROPERTY PROTECTION	23.0	7
INVOICING, PAYMENT AND AUDIT	10.0	3
LABOR AGREEMENTS/POLICIES	38.0	9
LABOR AND SUPERVISION	20.0	6
LIENS	22.0	7
LOWER TIER SUBCONTRACTS	5.0	2
MATERIALS, WORKMANSHIP, AND WARRANTIES	21.0	6
NO THIRD PARTY OR OTHER CLAIMS	41.0	10
NO WAIVER OF BREACH	31.0	8
OTHER WORK	8.0	2
PAYMENTS WITHHELD	11.0	4
PERMITS AND LICENSES	27.0	8
PRODUCT INFORMATION	47.0	11
PROJECT INVESTIGATION	7.0	2
PUBLICITY	32.0	8
RISK OF LOSS; DEDUCTIBLES; TITLE	14.0	5
SAFETY	4.0	2
SCHEDULE	6.0	2
SEVERABILITY AND SURVIVAL	33.0	8
SUBCONTRACT ADMINISTRATION	2.0	1
SUBCONTRACT	3.0	2
SUBCONTRACTOR'S DRAWINGS, SPECIFICATIONS AND CALCULATIONS	49.0	11
SUBCONTRACTOR INSURANCE	13.0	4
SUCCESSORS AND ASSIGNS	34.0	8
SUSPENSION	18.0	6
TAXES	28.0	8
TERMINATION FOR CAUSE	16.0	5
TERMINATION FOR CONVENIENCE OF CONTRACTOR	17.0	5

1.0 DEFINITIONS

The following definitions apply internally to these General Conditions and in the other Subcontract Documents, unless the context clearly requires otherwise:

1.1 "Applicable Law" shall have the meaning set forth in Article 25.1.

1.2 "Certificate of Completion" means the certificate issued by Contractor to Subcontractor after Subcontractor has completed all Work other than potential warranty obligations.

1.3 "Contractor" means Gallagher Kaiser Corporation, a Michigan corporation (or, if the Subcontract is signed by one of its subsidiaries, such subsidiary).

1.4 "Damages" shall have the meaning set forth in Article 25.2.

1.5 "Day(s)" or "day(s)" means calendar day(s) unless otherwise specified.

1.6 "Facility" means the facility located or to be located by Owner on the Facility Site.

1.7 "Facility Site" means all those parcels of land, on which the Project is or is to be located and for purposes of this Subcontract only those parcels of land which are occupied or used by Subcontractor in the performance of the Work.

1.8 "Force Majeure Event" shall have the meaning set forth in Article 39.1.

1.9 "General Conditions" means the terms and conditions set forth in this document, consisting of Articles 1.0 through 49.0.

1.10 "Hazardous Material" means any hazardous material or waste, toxic substance, pollution or contamination.

1.11 "Indemnified Parties" shall have the meaning set forth in Article 25.2.

1.12 "Lower Tier Subcontractor" means each lower tier vendor, supplier, materialman, consultant, contractor, subcontractor or other person or entity performing a portion of the Work for Subcontractor hereunder and/or providing equipment or services directly or indirectly in connection with the Work or Subcontract.

1.13 "MSDS" shall have the meaning set forth in Article 35.5.

1.14 "Owner" means the ultimate Owner of the project identified as such in the Subcontract Order and any of its contractors, affiliates or vendors of any tier.

1.15 "Party" or "Parties" means Subcontractor and/or Contractor.

1.16 "Prime Contract" means the contract between Owner and Contractor for the Project.

1.17 "Project" means Owner's project as described in the Subcontract.

1.18 "Project Schedule" means Contractor's overall schedule for its work on the Project under the Prime Contract.

1.19 "Schedule of Values" means allocates portions of the contract price to designated portions of the work.

1.20 "Special Conditions" means the conditions, if any, identified as such in the Subcontract.

1.21 "Subcontract" means the document entitled Subcontract Order issued by Contractor to Subcontractor in connection with the Project, all Subcontract Documents set forth therein, and all written amendments, change orders, modifications and supplements thereto, if any.

1.22 "Subcontract Documents" means the documents identified as subcontract documents in the Subcontract Order.

1.23 "Subcontract Order" shall mean the document entitled Subcontract Order and executed by Contractor and Subcontractor.

1.24 "Subcontract Price" means the price to be paid by Contractor to Subcontractor for the Work as provided for in the Subcontract.

1.25 "Subcontractor" means the individual or entity identified as such in the Subcontract.

1.26 "Work" shall mean all of the labor, services, equipment, materials, supplies, documentation and other items which are to be provided by Subcontractor under the Subcontract.

1.27 "Work Schedule" shall have the meaning set forth in Article 6.1.

2.0 SUBCONTRACT ADMINISTRATION

2.1 Contractor may establish and implement a program to monitor the performance and quality of the Work. Subcontractor shall provide Contractor's inspectors and supervisory personnel access to all Work wherever it is in preparation or progress. Notwithstanding any monitoring program implemented by Contractor with respect to the Work, Contractor shall have no obligation to supervise or inspect Subcontractor's Work, and any inspection by Contractor with respect to the Work shall not relieve Subcontractor of its obligations under this Subcontract.

2.2 Contractor may expedite Subcontractor and Lower Tier Subcontractors in the performance of the Work and Subcontractor shall provide Contractor with all information reasonably requested by Contractor to enable it to do so. Any expediting efforts by Contractor will not relieve or lessen Subcontractor's responsibility for its failure to meet its obligations under the Subcontract.

2.3 Subcontractor shall be solely responsible for the performance of the Work and neither Owner nor Contractor shall be responsible for Subcontractor's safety precautions and programs incident thereto, failure to comply with Applicable Law, or failure to furnish or perform the Work as required under the Subcontract.

2.4 Neither Owner nor Contractor shall be responsible for the acts or omissions of Subcontractor or any Lower Tier Subcontractor(s).

2.5 During the performance of the Work, Contractor may disapprove or reject Work where, in its opinion, such Work does not conform to the requirements of the Subcontract.

2.6 Contractor may schedule and conduct job meetings to be attended by persons designated by Contractor, including Subcontractor and its Lower Tier Subcontractor(s) for the Project, to discuss matters related to the Work and Project, including but not limited to procedures, progress, problems, scheduling, safety and coordination.

2.7 Contractor and/or the Owner may implement from time to time safety, health and drug free programs (and amendments thereto) of general applicability to the Facility Site. Contractor's personnel, Subcontractor's personnel, and all Lower Tier Subcontractor personnel shall all fully comply with any such programs. Contractor will keep copies of any such programs at the Facility Site and they will be available during normal business hours for Subcontractor to inspect and/or copy.

2.8 Contractor may establish procedures for processing shop drawings, samples and other submittals by Subcontractor.

2.9 Contractor shall review and process all requests for change orders by Subcontractor as set forth in Article 9.0.

2.10 Contractor shall determine when Subcontractor's Work is complete as set forth in Article 12.0.

3.0 SUBCONTRACT

3.1 The Subcontract Documents are intended to be read as a whole, and any Work required by one part and not mentioned in another shall be executed to the same extent and purpose as though required by all. The misplacement, addition, or omission of a word or character shall not change the intent of any part from that set forth by the Subcontract as a whole. Should a question or doubt arise as to the intent and meaning of any part of the Subcontract, Subcontractor shall immediately notify Contractor in writing before the part of the Work affected is performed. Contractor's determination of intent and meaning of such part shall be final, subject to dispute resolution under Article 40.0.

3.2 In the various parts of the Subcontract where reference is made to applicable codes and standards, the Work shall, except as otherwise specified, conform to the latest issue of the referenced code or standard available at the time the Work is performed. Upon any point of conflict between codes and standards applicable to the Work, Contractor shall be notified, but the code or standard imposing the more or most stringent requirement as the case may be shall govern, unless otherwise stipulated by Contractor in writing.

3.3 Where specific governing standards are not specified in connection with the Work, the highest applicable industry codes and standards shall govern.

3.4 Subcontractor acknowledges and agrees that it shall provide all labor, services, equipment, materials, supplies, documentation and other such items necessary or appropriate to perform and complete the Work in conformity with and as reasonably inferred from the Subcontract Documents, notwithstanding the fact that each such necessary or appropriate item may not be expressly specified therein.

4.0 SAFETY

4.1 Subcontractor acknowledges that safety is of prime importance to Contractor and Owner, and Subcontractor shall cooperate with Contractor and Owner in efforts to prevent injuries to personnel and to comply with all applicable safety rules and regulations.

5.0 LOWER TIER SUBCONTRACTORS

5.1 Subcontractor shall notify Contractor in writing of the names of Lower Tier Subcontractors proposed for any of the Work and shall not subcontract any part of the Work without the prior written authorization of Contractor. Subcontractor shall not subcontract the Work as a whole. Subcontractor shall bind all Lower Tier Subcontractors to the provisions of the Subcontract applicable to the subcontracted Work.

5.2 Neither the Subcontract nor any subcontract with a Lower Tier Subcontractor shall create any contractual relationship between any Lower Tier Subcontractor and either Owner or Contractor, nor any payment or other obligation on the part of either Owner or Contractor to any Lower Tier Subcontractor.

5.3 Notwithstanding the existence of any subcontract with a Lower Tier Subcontractor, Subcontractor shall be fully responsible to Contractor for the performance of the Work as if no such subcontract exists.

6.0 SCHEDULE

6.1 Within ten (10) days after Subcontract award, Subcontractor shall prepare and submit for Contractor's approval

a detailed schedule for the performance of the Work as required by the Subcontract (such approved schedule, the "Work Schedule"). The Work Schedule must conform to all schedule parameters provided in the Subcontract, including without limitation the Project Schedule. Subcontractor shall, subject to Contractor's approval, maintain and update the Work Schedule throughout the performance of the Work. Unless directed otherwise by Contractor, Subcontractor shall perform the Work strictly in accordance with the Work Schedule (as updated), and shall, without additional cost to Contractor, work such overtime or take such other or different measures as may be required in order to meet the Work Schedule.

6.2 Subcontractor represents that it shall (i) prepare documents for its planning, scheduling and coordination of the Work that are feasible and realistic, and (ii) prepare schedules, updates, revisions and reports that accurately reflect Subcontractor's reasonable expectations as to the sequence of activities, duration of activities, productivity or efficiency, projected and actual completion of any Work item or activity, and delays or problems expected or encountered and specified float time.

6.3 Subcontractor acknowledges that the dates required in the Work Schedule for the performance and completion of the Work are essential conditions of the Subcontract and agrees that Subcontractor's failure to perform and complete the Work consistent with such dates shall constitute a material violation of the Subcontract for the purposes of Article 16.0 and for the purposes of any other remedy available to the Contractor under the Subcontract, at law, and/or in equity.

7.0 PROJECT INVESTIGATION

7.1 Subcontractor represents that it has, or has had full opportunity to, examine the Facility Site and Subcontract Documents; that it has satisfied itself as to the requirements of the Work and all conditions which may affect the Work, including but not limited to labor conditions and availability, the condition of the Facility Site and access thereto to perform the Work and local weather conditions; that the Subcontract Price and Work Schedule have been determined with due regard for all such requirements and conditions which do or may affect the Work; and that its entry into the Subcontract has not been induced either wholly or in part by any promises, representations or statements by or on behalf of the Contractor, its agents or representatives, or the Owner, its agents or representatives, other than those set forth in the Subcontract. Subcontractor acknowledges and accepts the risk of mistake or error with respect to all matters within the scope of its Project investigation, and agrees that it shall not be entitled to, and shall make no claim for, any additional compensation or damages of any kind or character or extension of time should any requirements or conditions applicable to the Work be different from or in addition to those identified by Subcontractor through such investigation.

8.0 OTHER WORK

8.1 Subcontractor shall be required in the performance of its Work to coordinate its activities at the Facility Site with those of Contractor's or Owner's other contractors. Subcontractor agrees that the Owner or Contractor shall have the right to perform or have performed in or about the Facility Site during the time when Subcontractor is performing its Work such other work as Owner or Contractor may desire and that Subcontractor shall make every reasonable effort to enable both its Work and such other work to be completed without hindrance or interference. In the event Subcontractor's performance of its Work is delayed or interfered with by the work of Contractor, Owner or their respective other contractors, or the manner in which Contractor coordinates, prioritizes or otherwise requires or permits the Work and such other work to be performed, Subcontractor's sole and

exclusive remedy shall be an extension of time for the performance of the Work. Any claim by Subcontractor for an extension of time arising out of any alleged delay or interference shall be made to Contractor in accordance with Article 9.0.

9.0 CHANGES

9.1 Contractor has the right by written order to Subcontractor to add to, deduct from or otherwise change the Work. If any such Contractor directed change in the Work affects the Subcontract Price, Work Schedule or any other provision of the Subcontract, or Subcontractor becomes aware of any circumstance which Subcontractor believes necessitates a change in the Subcontract Price, Work Schedule or any other provision of the Subcontract, Subcontractor shall, within seven (7) days of receipt of such written order or becoming aware of such circumstance, submit a written request to Contractor for an adjustment to the Subcontract Price, Work Schedule or other provision of the Subcontract Subcontractor believes is affected thereby. Subcontractor's written request shall include documentation sufficient to enable Contractor to determine the factors necessitating the adjustment(s) being requested. If Subcontractor fails to provide such written request to Contractor within such seven (7) day period (or fails within such period to provide Contractor with a detailed statement of the reasons it is unable to do so and, as soon as it is able to do so, provides such request), Subcontractor shall be deemed to have waived any claim for an adjustment of the applicable Subcontract Price, Work Schedule or other provision of the Subcontract.

9.2 Following receipt of timely written documentation from Subcontractor as prescribed in Article 9.1, Contractor shall, provided an adjustment is warranted, issue a written amendment to Subcontractor either (i) adjusting the Subcontract Price, Work Schedule or other provision of the Subcontract as requested by Subcontractor or (ii) in the event Contractor disagrees with Subcontractor's statement as to the effect of a Contractor directed or other change to the Work, adjusting the Subcontract Price, Work Schedule or other provision of the Subcontract if and as it deems appropriate. Subcontractor shall thereafter perform its Work in accordance with such written amendment, subject to dispute resolution under Article 40.0. Subcontractor shall have no right to suspend or delay its performance of Work while Contractor is reviewing Subcontractor's change request or if it disagrees with the written amendment issued to it by Contractor

9.3 Notwithstanding anything to the contrary in this Article 9.0; no adjustment in the Subcontract Price, Work Schedule or any other provision of the Subcontract shall be made for or as a result of any correction of errors, omissions, deficiencies, coordination or improper or defective Work on the part of Subcontractor or its Lower Tier Subcontractors to complete work conforming to its intended use.

9.4 Any changes to the Work hereunder shall be performed by Subcontractor consistent with all of the requirements of the Subcontract, unless otherwise directed in writing by Contractor.

10.0 INVOICING, PAYMENT AND AUDIT

10.1 Within two weeks of subcontract award and before the subcontractor submits the first Application for Payment, the subcontractor must submit a "Schedule of Values," subject to the contractors and/or owners approval.

10.2 By not later than the last full work day before the twenty-fifth (25th) of each month, utilizing the approved subcontractor schedule of values Subcontractor shall submit an updated progressed schedule of values forecasted through the last day of the month to the Contractor's Representative for approval.

10.3 Failure to submit the progressed schedule of values as prescribed and/or failure to secure the designated Contractor's

Representative's approval will eliminate subcontractor's request for progress payment in the monthly billing cycle.

10.4 Following reconciliation, and by not later than the twenty-fifth (25th) day of each month, Subcontractor shall submit an approved invoice with supporting documentation to the Contractor's Representative for payment.

10.5 Subcontractor shall complete and submit a tax withholding notice (in the form included in the Subcontract Documents), no later than the date on which Subcontractor's first invoice for the Work is submitted. Failure to submit the tax withholding notice may result in the delay in payment by Contractor and will be cause for Contractor to deduct from all payments income taxes as required by Applicable Law.

10.6 Contractor shall review and process all invoices for payment submitted by Subcontractor.

10.7 Subcontractor invoices will be paid as set forth herein only if they meet the invoicing requirements set forth in Article 10.0, and shall each be subject to ten percent (10%) retainage until final completion of all Work and issuance by Contractor to Subcontractor of the Certificate of Completion (in the form included in the Subcontract Documents).

10.8 Any invoice deviating from the requirements of this Article 10.0 will be returned to Subcontractor for correction and/or submission of acceptable supporting documentation.

10.9 Terms of payment contained in the Subcontract shall take precedence over terms of payment shown on Subcontractor's invoices or elsewhere.

10.10 Subcontractor shall, and shall cause its Lower Tier Subcontractors to, submit a release and waiver of liens and claims and certification and proof of payment as to all labor and materials, with each invoice in the form prescribed by the Contractor (in the form included in the Subcontract Documents).

10.11 No payment shall constitute a waiver of any claims Contractor may have against Subcontractor.

10.12 All payments are provisional and any overpayment by Contractor to Subcontractor shall be deemed to be a mistake of fact and promptly repaid to Contractor upon demand.

10.13 The date of receipt by Contractor of a proper, complete and fully substantiated invoice from Subcontractor will establish the effective date of the invoice. If not otherwise specified in the Subcontract, payment shall be net sixty (60) days after the effective date of the invoice. The acceptance of any payment shall constitute a waiver of all claims by Subcontractor.

10.14 Applicable freight charges and sales and use taxes shall be shown separately on the invoices. Freight charges shall be supported by copy of the paid freight bill.

10.15 Notwithstanding anything to the contrary in this Subcontract, Contractor shall pay Subcontractor the undisputed portion of any invoice only after Contractor receives corresponding payment from Owner.

10.16 Subcontractor shall maintain true and correct records of all reimbursable costs (in accordance with generally accepted accounting principles applied on a consistent basis) pertaining to Subcontractor's Work under this Subcontract and all transactions related thereto, and shall retain all such records for a period of four (4) years from the date of their preparation, or such longer period as may be required by law. Contractor may from time to time make an audit of all records of Subcontractor in connection with the Work rendered under this Subcontract. Contractor shall be permitted to make such audits for a period of four (4) years

from the date of the preparation of the applicable records, or such longer period as may be required by law. As to all work which Subcontractor may perform on a reimbursable basis, Contractor will have the right at reasonable times and places, to inspect, and copy any of Subcontractor's books, accounts, time cards, records of transactions, estimates, schedules, correspondence or any other records or documents which may have possible bearing on the performance of such Work. Subcontractor shall assist Contractor in making the above audits. In the event an audit by Contractor results in disallowance of costs, any overpayment that has been made to Subcontractor will be immediately reimbursed by Subcontractor to Contractor.

11.0 PAYMENTS WITHHELD

11.1 Contractor may withhold the whole or any part of any payment to Subcontractor to such extent as may be necessary to protect Contractor from loss as a result of:

- (a) incomplete, defective or damaged Work not remedied;
- (b) Backcharges, per Article 46.0;
- (c) claims filed or reasonable evidence indicating probable filing of claims, including lien claims, involving or arising out of Subcontractor's Work;
- (d) damage to Contractor's, Owner's or their respective other contractors work;
- (e) failure of the Subcontractor to make payments when due to Lower Tier Subcontractors;
- (f) reasonable insecurity regarding Subcontractor's intention or ability to continue with the proper and timely performance of the Work;
- (g) failure of the Subcontractor to perform or comply with any of its obligations under the Subcontract Documents; or
- (h) expenses arising from frivolous claims against Contractor.

11.2 Funds withheld in accordance with this Subcontract are not for the benefit of the bonding company or any other third party.

12.0 COMPLETION OF THE WORK

12.1 When Subcontractor deems the Work finally completed, Subcontractor shall give written notice thereof to Contractor. Within fifteen (15) days after receipt of such notice, Contractor will determine if the Work has been completed as required and advise Subcontractor in writing either (i) that the Work has been finally completed or (ii) that the Work has not been finally completed, stating reasons therefor. In the event the Contractor advises Subcontractor that the Work is not finally complete, Subcontractor will promptly complete the Work and give written notice to Contractor when it has done so. The procedure stated herein shall be repeated until the Work has been satisfactorily and finally completed and the Certificate of Completion has been submitted by Subcontractor and accepted in writing by Contractor. The Work will be deemed finally complete as of the date of Contractor's notice to Subcontractor to that effect. The procedure set forth in this Article 12.0 shall in no way limit Contractor's rights or Subcontractor's obligations under Article 21.0. No delivery of any product shall be considered made or complete until such product is completely and finally delivered to Contractor's physical possession and control in its entirety, including but not limited to replacement of any defective parts.

12.2 At any time prior to final completion of all the Work, Contractor may temporarily take possession of and use any part

of the Work. Contractor may return any such Work to Subcontractor for completion.

12.3 The Contractor may at any time request in writing that Subcontractor permit Contractor to accept any such part of the Work and Subcontractor shall make that part of the Work available for Contractor's inspection as soon as reasonably possible, and in no event later than five (5) days following the request. If Contractor agrees following the inspection that the part of the Work in question can be accepted by Contractor, Contractor shall issue a Certificate of Completion for such portion of the Work. Such action by Contractor and/or use by Contractor and/or Owner shall neither relieve Subcontractor of any of its responsibilities under the Subcontract, nor act as a waiver by Contractor of any of the conditions thereof, provided that Subcontractor shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use. Subcontractor shall not use any portion of the Work other than as approved in writing by Contractor. In any such case Subcontractor shall properly use and maintain and, upon completion of its use and at its expense, recondition such portion of the Work to the satisfaction of Contractor.

13.0 SUBCONTRACTOR INSURANCE

13.1 Unless otherwise specified in the Subcontract, Subcontractor agrees that it shall obtain and maintain during the performance of any Work at the Facility Site and until the acceptance thereof, the insurance described in 13.2 and shall be carried with insurance companies with at least a Best's "A" rating. Subcontractor will furnish to Contractor three (3) copies of the certificate(s) evidencing such insurance prior to commencing performance or physically present on the Facility site under the Subcontract.

Contractor may elect to implement a Contractor Controlled Insurance Program (CCIP) on this project. Under this type of program the Sponsor will centralize the purchase of insurance for activities of the construction manager, general contractor, all subcontractors and all sub-subcontractors for work performed at or emanating from the project site. This consolidated purchasing of insurance is known as an Contractor Controlled Insurance Program (CCIP) and will include Workers' Compensation, Employer's Liability, General Liability and Excess/Umbrella Liability coverage. Builder's Risk insurance coverage will be provided under a separate program if required. Participation in the CCIP will be mandatory for all tiers of contractors and subcontractors unless specifically excluded in writing by the Sponsor.

13.2 The required insurance coverage is as follows:

(a) Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits of the Worker's Compensation laws of any applicable jurisdiction in which the Work is to be performed hereunder, and Employers' Liability Insurance with limits of one million dollars (\$1,000,000) for trauma, each accident; one million dollars (\$1,000,000) for disease, each person and one million dollars (\$1,000,000) disease, policy limit.

(b) Commercial General Liability Insurance written on the latest ACCORD occurrence form and including coverage for Contractual Liability and Products and Completed Operations (to remain in force for two (2) years following acceptance of the Work. The insurance required by this clause (b) shall have the following limits of liability:

Third Party Bodily Injury and Property Damage Liability:
\$1,000,000 combined single limit per occurrence and \$2,000,000 combined single limit general aggregate, with such limits available to the Project.

(c) Business Automobile Liability insurance covering all owned, leased and non-owned vehicles used in connection with the Work, with not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage.

(d) If professional services are involved, Professional Liability Insurance with not less than \$5,000,000 per claim with a 24 months discovery period after completion of the work.

13.3 The following endorsements shall be included in the above insurance coverages:

(a) Contractor and Owner named as additional insureds (except on workers' compensation and professional liability)

(b) A waiver of subrogation in favor of Contractor and Owner.

(c) Severability of Interest or Separation of insureds.

(d) Subcontractor's insurance is primary and any insurance maintained by Contractor is considered excess and non-contributory.

14.0 RISK OF LOSS; DEDUCTIBLES; TITLE

14.1 Notwithstanding any other provision(s) in this Subcontract, at all times prior to the final completion of the Work as evidenced by issuance of the Certificate of Completion, Subcontractor shall bear the risk of loss and full responsibility for the costs of replacement or repair resulting from any damage to, loss of or destruction of the Work (to the extent not covered by insurance proceeds received by or for the benefit of Contractor under Builder's Risk insurance applicable to the Project), including but not limited to Owner furnished work, construction equipment, and the Facility as a whole.

14.2 In addition to its obligations under Article 14.1, Subcontractor shall be responsible for deductibles for any damage or loss covered by insurance provided by Subcontractor under Article 13.0, and for the payment of deductibles for any damage or loss covered by any Builder's Risk insurance and covering the Work, provided that with respect to such Builder's Risk insurance deductible, such damage or loss was (i) caused by the fault, negligence or willful misconduct of Subcontractor or any of its Lower Tier Subcontractors or (ii) caused by the failure of Subcontractor to meet its obligations under the Subcontract.

14.3 Title of the Work, or portions thereof, shall pass to Contractor upon the occurrence of the earliest of the following events, as applicable: a) when such Work or portion is delivered to the Contractor or Facility Site pursuant to the Subcontract; b) when Subcontractor has been paid any sum to which it may become entitled in respect to such Work or portion; c) when such Work or portion is identifiable to the Subcontract ; or d) when the Certificate of Completion is issued by Contractor. All equipment, materials, supplies and other items to which Contractor has title shall not be removed from the Facility Site without Contractor's prior written consent. Use of storage facilities furnished to Subcontractor at the Facility Site shall not relieve Subcontractor of such risk of loss unless otherwise agreed in writing.

15.0 CONTRACTOR'S RIGHT TO DO WORK

15.1 If the Subcontractor should neglect to prosecute the Work properly or timely or fail to perform any of its other obligations under the Subcontract, Contractor, after two (2) days written notice to the Subcontractor (or shorter period if necessary in Contractor's sole discretion), may proceed to make good such deficiencies and deduct all costs, expenses and damages thereby suffered, in whole or in part, from any payment then or thereafter due to the Subcontractor, without prejudice to any other remedy it may have to collect the said damages or any part thereof not so deducted.

16.0 TERMINATION FOR CAUSE

16.1 If the Subcontractor should file a bankruptcy petition or be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for the Subcontractor, or if it should fail to supply enough properly skilled workmen or proper plant or materials or fail to make sufficient progress so as to endanger the timely and proper performance of the Work, or if it should abandon the Work or unreasonably delay its progress or completion, or persistently disregard Applicable Law or the instructions of Contractor or otherwise be guilty of a material violation of any provisions of the Subcontract, then Contractor may, without prejudice to any other right or remedy, upon written notice to Subcontractor, terminate the employment of the Subcontractor with respect to all or part of the Work and take possession of such Work, and all materials for the Work and tools, plant, appliances and equipment and temporary construction used in connection therewith and finish the Work by whatever method Contractor may deem expedient, all at the expense of Subcontractor. In such case Subcontractor shall not be entitled to receive any further payment from Contractor.

16.2 If Contractor's expense of completing the Work, including any attorney's fees and other legal expenses in connection therewith, exceed the amount, if any, which Contractor agrees would have been payable to Subcontractor had it completed the Work as required under the Subcontract, Subcontractor shall pay the difference to Contractor within ten (10) days after receipt from Contractor of written notice of the amount thereof.

16.3 Upon the failure of Subcontractor to pay Contractor as set forth in Article 16.2, Contractor shall have the right to sell the whole or any part of any of Subcontractor's materials, tools, plant, appliances, equipment and temporary structures at public or private sale at any time or times thereafter without further notice to Subcontractor and to transfer and deliver the same. Contractor shall have the right to become the purchaser at such sale or sales (free and discharged of any equity of redemption) and after deducting all legal and other costs, attorney fees and expense of sale and delivery, shall apply the balance, if any, of the proceeds of such sale or sales so made, to the amount due Contractor. Contractor shall pay the surplus, if any, to Subcontractor and Subcontractor shall pay any deficiency to Contractor on demand.

17.0 TERMINATION FOR CONVENIENCE OF CONTRACTOR

17.1 Contractor may upon written notice to Subcontractor, without cause and without prejudice to any other right or remedy, elect to terminate all or any part of the Work. Such termination shall be effective in the manner specified in said notice. On receipt of such notice Subcontractor shall, unless the notice directs otherwise, immediately discontinue Work and the placing of orders for equipment, materials, supplies and other items in connection with the performance of the terminated Work, and shall, if requested, make every reasonable effort to procure cancellation of existing orders and subcontracts upon terms satisfactory to Contractor, and shall thereafter do only such Work as may be necessary to preserve and protect Work already in progress and continue to complete the Work not terminated hereunder, and to protect all material, plant or equipment on the Facility Site or in transit thereto.

17.2 Should Contractor elect to terminate all or any part of the Work for convenience as provided herein, a complete and final settlement of any and all claims of Subcontractor arising as a result of such termination shall be made as follows: Contractor shall pay to Subcontractor, forty five (45) days after receipt of an invoice which meets the requirements of Article 10.0, all amounts due and owing to Subcontractor on or prior to the date of termination, including a payment for that Work satisfactorily

completed but not yet invoiced by Subcontractor prior to the termination date, all retainage held by Contractor at the date of termination, and all reasonable, actual termination costs incurred by Subcontractor in terminating the Work (but excluding any and all costs and expenses incurred by Subcontractor from and after the date of termination for those of its employees who are not directly performing required termination activities). In no event shall Subcontractor be entitled lost profit on Work not performed.

17.3 As a condition precedent to receiving any termination payment under this Article 17.0, Subcontractor shall execute and deliver all such papers and take such steps concerning obligations and commitments of and to Subcontractor in connection with the Work as Contractor may require for the purpose of fully vesting in Contractor the rights and benefits of Subcontractor under such obligations and commitments, including but not limited to valid and final waiver of any and all actual or potential liens and/or claims.

18.0 SUSPENSION

18.1 Contractor may upon written notice to Subcontractor at any time suspend the performance of all or any portion of Work. Upon receipt of such notice, Subcontractor shall, unless the notice requires otherwise:

(a) immediately discontinue the suspended Work on the date and to the extent specified in the notice;

(b) place no further orders or contracts for equipment, material, supplies, services or facilities with respect to suspended Work, except to the extent required in the notice;

(c) promptly make every reasonable effort to obtain suspension upon terms satisfactory to Contractor of all orders, contracts, subcontracts and other agreements to the extent they relate to the performance of Work suspended;

(d) continue to protect and maintain Work already in place, including those portions of Work which have been suspended; and

(e) take any other reasonable steps to minimize Subcontractor's costs associated with such suspension.

18.2 As full compensation for Contractor's suspension of Work, Contractor will pay to Subcontractor forty five (45) days after receipt of an invoice which meets the requirements of Article 10.0, the actual, reasonable costs associated with mobilization and demobilization of Subcontractor's plant, forces and equipment, the cost of maintaining and protecting the Work to the date of the invoice, and those amounts Contractor and Subcontractor agree Subcontractor should be paid for equipment, materials, supplies, documentation or other items which Subcontractor procured for the Project but for which Subcontractor has not been paid as of the date of the suspension. Subcontractor shall during the period of the suspension continue to invoice Contractor in accordance with Article 10.0 for the costs of maintaining and protecting the Work.

18.3 Upon receipt of notice to resume suspended Work, Subcontractor shall immediately resume performance thereof to the extent required in the notice.

18.4 No adjustment shall be made for any suspension to the extent that performance of the Work would have been concurrently suspended, delayed, or interrupted by Subcontractor's non-compliance with the requirements of this Subcontract.

19.0 EMERGENCIES

19.1 In the event of an emergency at the Facility Site threatening loss or injury to life or property which Subcontractor

may be able to prevent or mitigate, Subcontractor, without awaiting special instruction or authorization from Contractor, shall act as necessary to attempt to prevent or mitigate such threatened loss or injury.

20.0 LABOR AND SUPERVISION

20.1 Subcontractor shall engage in the performance of the Work a sufficient number of skilled workers to perform the Work promptly, diligently, and in accordance with the requirements of the Subcontract. Prior to commencement of the Work, Subcontractor shall provide Contractor with copies of its policies regarding the furnishing of labor including copies of all wage agreements, working rules, and regulations, if applicable, affecting the Work.

20.2 Subcontractor shall engage in the performance of the Work a sufficient number of competent supervisory personnel as are necessary to perform the Work in accordance with the requirements of the Subcontract. Subcontractor shall further have a competent superintendent continuously on the Facility Site during work hours and readily available upon call. The superintendent shall be fully acquainted with the Work and shall have the authority to administer the Subcontract on Subcontractor's behalf and shall not be changed except with the consent of Contractor, which shall not be unreasonably withheld.

20.3 If Contractor notifies Subcontractor in writing that any employee or agent of Subcontractor or one of its Lower Tier Subcontractors is incompetent, disorderly, or otherwise unsatisfactory, such person shall immediately be removed, at Subcontractor's cost, from the Work and shall not thereafter be employed in the performance of the Work.

21.0 MATERIALS, WORKMANSHIP, AND WARRANTIES

21.1 All of the equipment, material, supplies and other items to be furnished by Subcontractor and incorporated into the Facility or Project shall be new, unused, of first rate quality, suitable for use in the Work and in strict conformity with the Subcontract Documents.

21.2 Unless specified otherwise in the Subcontract, the following shall apply:

(a) Subcontractor shall at all times and in a manner reasonably satisfactory to Contractor, cover and protect from damage, loss, theft or destruction all equipment, materials, supplies and other items which are to be used in the performance of, or incorporated into, the Work at the Facility Site. Subcontractor is solely responsible for all equipment, materials, supplies and other items stored by it at the Facility Site and any shortages thereof will be replaced by Subcontractor at its expense.

(b) Subcontractor shall, at its expense, promptly repair, restore or replace any property of the Owner, Contractor or their respective other contractors which Subcontractor or any of its Lower Tier Subcontractors damages, destroys or loses.

21.3 Subcontractor warrants that all Work (i) shall, as applicable, be free of defects in design, workmanship and material, (ii) shall be performed in accordance with the highest accepted industry codes and standards applicable to the Work, (iii) shall be performed in a good and workmanlike manner and (iv) shall strictly conform to the Subcontract Documents. Upon receipt of written notice of a defect or deficiency in the Work, Subcontractor shall at Contractor's sole option and at no cost to Contractor, promptly repair, replace, or reperform such defective or deficient Work so that it conforms with the requirements of the Subcontract.

21.4 If Contractor deems it inexpedient for Subcontractor to correct defective or deficient Work, Contractor may make a deduction from the Subcontract Price in lieu of such correction, as determined by Contractor.

21.5 Subcontractor shall, at Contractor's option, assign to Contractor or Owner any and all rights under any warranties it may have received or be entitled to from suppliers.

21.6 Contractor may or may not elect to obtain (with or without payment therefor) the services, from Subcontractor, a Lower Tier Subcontractor or elsewhere, of technical advisors for such periods of time, if any, as Contractor in its sole and exclusive discretion deems appropriate. However the presence, absence, quality of performance, or period of time of service of any such technical advisor(s) shall be irrelevant to and shall not in any manner impact any guarantee or warranty of Subcontractor or of any Lower Tier Subcontractor.

22.0 LIENS

22.1 Subcontractor shall promptly pay for all labor, services, equipment, materials, supplies, documentation or other items used or employed by it or on its behalf in the performance of the Work and shall keep and maintain all equipment, materials, supplies, and other items and the Facility, Facility Site and Project free from all mechanic's liens and other liens. If any lien or claim of lien is filed upon or against the Facility, Facility Site and/or Project by a Lower Tier Subcontractor, Subcontractor shall promptly furnish to Contractor (or appropriate governmental authority) a bond or other collateral necessary to discharge such lien or claim of lien and shall indemnify, defend and hold harmless the Indemnified Parties against and from any and all Damages arising from or in connection with any such lien, claim of lien and/or claim for payment, as applicable, and subject to Applicable Law.

23.0 INTELLECTUAL PROPERTY PROTECTION

23.1 Subcontractor shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all Damages which the Indemnified Parties may suffer or pay by reason of any claims or suits arising out of claims of infringement of any patent rights, copyrights or other intellectual property, proprietary or confidentiality rights relating to the Work performed by Subcontractor or any Lower Tier Subcontractor under or in connection with the Subcontract, subject to Applicable Law. Any such suit or claim shall be defended at Subcontractor's expense by counsel satisfactory to Contractor. If, in any such suit or claim, a temporary restraining order or preliminary injunction is granted, Subcontractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such suit or claim, the Work, or any part, combination or process thereof, is held to constitute an infringement and its use is permanently enjoined, Subcontractor shall promptly make every reasonable effort to secure for Owner or Contractor, at no cost to Owner or Contractor, a license authorizing continued use of the infringing item. If Subcontractor is unable to secure such suspension or such license within a reasonable time, Subcontractor shall, at its own expense and without impairing Owner's or Contractor's use of the Work, either replace the affected Work, or part, combination or process thereof, with non-infringing components or parts or modify the same so that same becomes non-infringing.

24.0 CONFIDENTIALITY

24.1 All drawings, specifications, technical data, and other information furnished to Subcontractor by Contractor, or Owner, or their respective other contractors are, and shall remain, the property of Owner, Contractor or such other contractors, as the

case may be, and may not be copied or otherwise reproduced or used in any way except in connection with the Work, or disclosed to third parties or used in any manner detrimental to the interests of Owner, Contractor or such other contractors.

24.2 The following information shall not be subject to the confidentiality requirements of Article 24.1:

(a) information in the public domain through no action of Subcontractor in breach of this Subcontract; or

(b) information independently developed by Subcontractor; or

(c) information acquired by Subcontractor from a third party not delivered to Subcontractor in breach of confidentiality agreements which said third party may have with Contractor, Owner, Owner's other contractors, or any other third party.

24.3 If and when requested in writing, Subcontractor shall, and shall cause its Lower Tier Subcontractors to, execute any such confidentiality agreements as are deemed necessary for the protection of Contractor, Owner and/or any of their respective other contractors.

25.0 APPLICABLE LAW

25.1 Subcontractor, all Lower Tier Subcontractors, and all Work provided hereunder shall comply with all laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any court or governmental agency or authority, and rules, regulations, codes, orders, interpretations of any federal, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, court or other body having jurisdiction over the Project or any activity conducted at or in connection with the Project ("Applicable Law").

25.2 Subcontractor shall indemnify, defend, and hold harmless Owner, Contractor, and their respective directors, officers, employees, parents and subsidiaries of any tier, representatives, agents, successors and assigns, and any and all representatives, agents, directors, officers, employees of any of the foregoing, (the "Indemnified Parties"), against and from any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, interest and causes of action, including without limitation administrative and legal costs, reasonable attorney's fees (collectively, "Damages"), arising from or based on any actual or asserted violation of Applicable Law by Subcontractor or any of its Lower Tier Subcontractors or vendors, subject to Applicable Law.

25.3 Subcontractor shall not under any circumstance apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution, laws or regulations relating to the Subcontract or the performance thereof, without Contractor's prior written approval.

26.0 FACILITY SITE

26.1 Prior to moving any equipment or personnel to the Facility Site, Subcontractor shall review and become familiar with Facility Site programs and procedures and Subcontractor and its Lower Tier Subcontractors shall fully and strictly comply with same.

26.2 Any temporary construction buildings and sanitary facilities provided by Subcontractor shall conform to Facility Site and permit requirements.

26.3 Subcontractor shall perform site clean-up regularly (including on a daily basis if necessary or directed by Contractor) in order to keep that area of the Facility Site on which it performs any Work hereunder clean and free from accumulation of petroleum, waste materials (including, without limitation, any waste Hazardous Materials that were brought to or disturbed or

released upon or near the Facility Site by Subcontractor or its Lower Tier Subcontractors or were created or disturbed or released as a result of, or in connection with, the performance by Subcontractor or any of its Lower Tier Subcontractors of the Work), rubbish and other debris resulting from the performance of the Work.

26.4 Subcontractor shall not permit visitors, cameras, or picture or video taking on the Facility Site or Work without the prior, written approval of Contractor.

26.5 Subcontractor shall repair or replace, at its expense, any Work or property which it or any of its Lower Tier Subcontractors damages.

26.6 Subcontractor shall conduct inspections to determine if those areas of the Facility Site used by Subcontractor and any of its Lower Tier Subcontractors to perform the Work are safe for the performance thereof and Subcontractor accepts the sole, non-delegable responsibility for providing a safe place to work for its employees and the employees of its Lower Tier Subcontractors and for the adequacy of and required use of all safety equipment.

27.0 PERMITS AND LICENSES

27.1 Unless obtained by Owner or Contractor, Subcontractor shall obtain and pay for any permits, licenses, or royalties which may be required for the performance of the Work, and shall furnish evidence thereof to Contractor. Furthermore, whenever reports to municipal authorities are required from Owner or Contractor under penalty to report, or to report within a specific time, Subcontractor shall be held liable for any costs or penalties to which Owner or Contractor may be subjected as a result of Subcontractor's failure to give proper evidence of a license or permit within any time limit specified.

28.0 TAXES

28.1 Subcontractor agrees to pay and that the Subcontract Price is inclusive of, all taxes, fees and contributions on or measured by the income, gross receipts or assets of Subcontractor or any of its Lower Tier Subcontractors and all taxes, fees and contributions on or measured by employees or other labor costs of Subcontractor or any of its Lower Tier Subcontractors, including without limitation all payroll or employment compensation tax, social security tax or similar taxes for Subcontractor's or any of its Lower Tier Subcontractor's employees. Subcontractor further agrees to pay and that the Subcontract Price is inclusive of all sales and use taxes, and all import, export and other customs duties, charges, levies and fees imposed or incurred in connection with the shipping and delivery of any equipment, materials, supplies or other items required for the Work to the Facility Site. In the event that Contractor should pay or be required to pay any of the foregoing items or any portion thereof, Subcontractor shall reimburse Contractor therefor in full within five (5) days of receipt of written demand from Contractor for any such reimbursement.

29.0 GENERAL INDEMNITY

29.1 Subcontractor shall indemnify, defend and hold harmless the Indemnified Parties against and from any and all Damages (including without limitation any damage to or destruction of property of, or death of or bodily injury to, persons (regardless of whether they are employees of an Indemnified Party, Subcontractor or any Lower Tier Subcontractor, or unaffiliated with the Project, or otherwise)) caused or contributed to by (i) any fault or act or omission of Subcontractor or any of its Lower Tier Subcontractors, or of any of their respective employees, agents, or representatives, under, in connection with or otherwise relating to this Subcontract or the Project or (ii) by any

failure of Subcontractor to comply with the terms of this Subcontract; subject to Applicable Law.

29.2 In any and all claims against one or more of the Indemnified Parties by any employee of Subcontractor or of any of its Lower Tier Subcontractors, the indemnification, defense and hold harmless 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 or of any of its Lower Tier Subcontractors, under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

30.0 ASSIGNMENT

30.1 Subcontractor agrees that it shall have no right, power or authority to assign or delegate any of its rights or obligations under the Subcontract, either voluntarily or involuntarily, or by operation of law, without prior written consent of Contractor and that any such unauthorized assignment or delegation shall be null and void and of no effect.

31.0 NO WAIVER OF BREACH

31.1 Any failure by Contractor at any time, or from time to time, to enforce or require the strict compliance with and performance by Subcontractor of any of the terms or conditions of the Subcontract shall not constitute a waiver by Contractor or a breach of any such terms or conditions or any other breaches, or the right of the Contractor to avail itself of the remedies it may have for any such breach.

32.0 PUBLICITY

32.1 Subcontractor shall not disclose the nature of its work on the Project, or engage in any other publicity or public media disclosures with respect to the Project without the prior written consent of the Contractor.

33.0 SEVERABILITY AND SURVIVAL

33.1 The provisions of the Subcontract are severable, and, if any provision shall be determined to be illegal or unenforceable, such determination shall in no manner affect any other provision of the Subcontract, and the remainder of the Subcontract shall remain in full force and effect. In the event that any provision of the Subcontract is held to be unenforceable or invalid by any court of competent jurisdiction, Contractor and Subcontractor shall in good faith negotiate an equitable adjustment in the provisions of the Subcontract to preserve its purpose and maintain the allocation of risk, liabilities and obligations originally agreed upon, to the maximum extent then possible under Applicable Law.

33.2 Notwithstanding anything to the contrary in the Subcontract, the provisions of the Subcontract setting forth (i) Subcontractor's obligations with respect to confidentiality, indemnification, and warranty; (ii) limitations on Contractor's liability; and (iii) any obligation which expressly or by implication survives termination of the Subcontract, shall survive completion of the Work or the earlier termination under Article 15.0 or Article 16.0.

34.0 SUCCESSORS AND ASSIGNS

34.1 The Subcontract shall be binding upon and inure to the benefit of the Parties' respective heirs, successors, executors, administrators and authorized assigns.

35.0 HAZARDOUS MATERIALS

35.1 Subcontractor shall notify Contractor immediately upon the discovery of the presence of any Hazardous Material on, or the release of Hazardous Material on or from, the Facility Site, and shall proceed in accordance with Article 35.2 hereof in connection therewith.

35.2 In the event a Hazardous Material is discovered to exist at the Facility Site and is one for which Subcontractor is responsible pursuant to Article 35.3 hereof, Subcontractor shall notify Contractor of the presence thereof and be responsible for responding to and handling such Hazardous Material (including but not limited to the condition resulting from the presence thereof) in compliance with the requirements of all Applicable Laws and as directed by Contractor. In the event a Hazardous Material is discovered to exist at the Facility Site and is not one for which Subcontractor is responsible pursuant to Article 35.3 hereof, Subcontractor shall immediately notify Contractor of the presence thereof and thereafter proceed with the performance of the Work as directed by Contractor or otherwise

35.3 Subcontractor is responsible for any Hazardous Material that Subcontractor or any of its Lower Tier Subcontractors creates, brings to or disturbs or releases upon or near the Facility Site.

35.4 Subcontractor shall indemnify, defend and hold harmless the Indemnified Parties against and from all Damages caused or contributed to by any Hazardous Material for which Subcontractor is responsible pursuant to Article 35.3 hereof, subject to Applicable Law.

35.5 Subcontractor agrees to comply with Federal OSHA Hazard Communication Standards 29 CFR 1926.59 and 29 CFR 1910.1200 which require that manufacturers, importers and distributors properly label all containers of hazardous materials or components and furnish a Material Safety Data Sheet ("MSDS") for each hazardous material supplied. One (1) copy of the related MSDS must be provided with each shipment of any hazardous material. Failure to provide the MSDS or proper labeling on the container(s) is a violation of Federal regulations and may result in the rejection of the shipment. Subcontractor shall be responsible for all shipping charges related thereto. Revised MSDSs must be submitted to Contractor when there is a change in composition or when significant new information concerning hazards or ways to protect against hazards become known.

35.6 Nothing furnished by Subcontractor in the performance of the Work for incorporation into the Facility shall contain asbestos (i.e. shall be "asbestos-free"). Subcontractor shall execute and submit a certificate of conformance with this Section 35.6 in the form furnished by Contractor.

36.0 CONTRACTOR INFORMATION

36.1 No information, including but not limited to, estimated quantities, bills of materials, lists, weights or quantities of materials or structures which have been or may be furnished to Subcontractor under the Subcontract are warranted or guaranteed as to accuracy, completeness or otherwise. They may or may not be accurate in any or all particulars, and they shall not be considered as finally correct, sufficiently complete or accurately covering any portion or all of the Work to be done under the Subcontract.

36.2 Although the actual amount of Work completed under unit price items, if any, may differ from estimated quantities, the basis of payment for such Work shall be the actual amount of Work completed in each case, unless otherwise agreed in writing. Subcontractor agrees that it will make no claim for loss of anticipated profits or for any other damages because no work is ordered under certain items or because of the quantities of Work

actually completed are less than any estimates of quantity that have been or may be furnished to Subcontractor.

37.0 CONTRACTOR FURNISHED MATERIALS

37.1 All equipment, material, supplies or other items furnished by Contractor, if any, as part of the Work shall be unloaded and received by Subcontractor in the presence of Contractor's authorized representative and quantities thereof shall be checked by Subcontractor. The delivery and acceptance of all such items shall be recorded in writing, and Subcontractor shall evidence receipt and acceptance of such items by signing forms satisfactory to Contractor.

37.2 Subcontractor shall carefully note any visible shortage or damage to Contractor furnished items prior to Subcontractor's acceptance of delivery thereof and shall assume full responsibility for any loss or damage of such items thereafter. Subcontractor shall promptly notify Contractor if any items supplied to Subcontractor are surplus and, without additional compensation, shall cooperate in the disposition of such surplus.

38.0 LABOR AGREEMENTS/POLICIES

38.1 Subcontractor and each of its Lower Tier Subcontractors shall at all times during the performance of the Work abide by and be signatories to any project labor agreement(s) applicable to the Project and Subcontractor shall provide evidence that it and each of its Lower Tier Subcontractors are signatories to such agreement(s) prior to performing any Work at the Facility Site.

38.2 Subcontractor shall notify Contractor as promptly as possible of any actual or potential labor dispute which may affect the Work. If any such labor conditions threatens the timely completion of any portion of the Subcontract, or if Subcontractor fails to give satisfactory assurance of its ability to complete the Work even in the event of such work stoppage, or fails to employ labor that is in harmony with and compatible with other labor employed on the Project, or fails to continue to perform the Work without interruption or delay during a strike, picket, walkout, or other work stoppage or slowdown caused by a labor dispute, Contractor may terminate the Subcontract for cause and proceed in accordance with Article 16.0 hereof.

38.3 Subcontractor shall comply with all drug, alcohol and safety programs of Contractor.

39.0 FORCE MAJEURE

39.1 Any delay in or failure of performance by either Party hereunder shall be excused if and to the extent caused by a "Force Majeure Event". Force Majeure Events are defined as fire, explosion, act of God, act of the public enemy, and change in law, provided that such event is beyond the control of and without fault on the part of the Subcontractor and the effects of which could not be prevented or avoided by the exercise of due care or foresight.

39.2 In the event Subcontractor, by reason of a Force Majeure Event, is rendered unable to perform any of its obligations or comply with any conditions under the Subcontract, Subcontractor shall give written notice to Contractor no later than three (3) days after the occurrence of such Force Majeure Event, with a description of the particulars of the Force Majeure Event, including the estimated duration of said Force Majeure Event or the effect thereof and the probable impact on Subcontractor's performance under the Subcontract. The effects of said Force Majeure Event shall, so far as possible, be remedied by Subcontractor with all reasonable dispatch, and Subcontractor shall use its best efforts to eliminate and mitigate the consequences thereof. The time for Subcontractor's performance may be extended for a period equal to the time such performance is delayed by said Force Majeure Event, but such relief shall be conditioned upon Subcontractor's

initial and continued satisfaction of the notice, reporting, remedy and mitigation, and other requirements of this Article 39.2 in relation to said Force Majeure Event. Under no circumstances shall Subcontractor be entitled to any additional compensation or damages of any kind or character by virtue of a Force Majeure Event. Any claim by Subcontractor for an extension of time arising out of any alleged Force Majeure Event shall be made to Contractor in accordance with Article 9.0.

40.0 DISPUTES

40.1 In the event a dispute arises between the Parties regarding the application or interpretation of any provision of the Subcontract, the aggrieved Party shall give notice in writing to the other Party and the Parties shall negotiate in good faith and attempt to resolve such dispute. If the Parties fail to resolve the dispute within thirty (30) days after delivery of such notice, each Party shall have the right to pursue any and all remedies available to it hereunder or available to it at law or in equity. Notwithstanding the existence of a dispute between the Parties and regardless of whether such dispute is the subject of dispute resolution pursuant to this Article 40.0, Subcontractor shall not be entitled to suspend or otherwise delay its performance of the Work.

40.2 Notwithstanding any other provision of this Article 40.0, in the event: a) Owner and Contractor become involved in any arbitration, mediation, litigation or other proceedings, and b) Contractor determines that it would be appropriate that disputes under this Subcontract be resolved in such dispute proceeding due to the existence of common issues of fact or law, Subcontractor shall consent to joinder to, and a consolidated resolution of issues in, that proceeding. Subcontractor hereby consents to such joinder and irrevocably waives any objection which it may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction, including any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of in personam jurisdiction.

40.3 In the event Subcontractor submits or pursues a poorly substantiated or frivolous change order or claim against Contractor or Owner or their respective other contractors, Contractor shall be entitled to back-charge Subcontractor for all cost and expense (including but not limited to attorneys fees) incurred by Contractor and/or Owner because of such change order or claim. In the event Subcontractor should submit and/or pursues any such change order or claim against Contractor, Subcontractor shall pay to Contractor any and all costs and expenses (including but not limited to attorneys fees) incurred in investigating and/or defending against and/or resolving such claim or change order, within ten (10) days after Contractor's submission of its invoice (which may be interim or total) to Subcontractor therefor.

41.0 NO THIRD PARTY OR OTHER CLAIMS

41.1 Subcontractor agrees that nothing in any agreement between Owner and Contractor creates any rights in favor of Subcontractor and Subcontractor covenants not to sue Owner or Contractor as a third-party beneficiary of any such agreement.

41.2 Subcontractor agrees that any claims it may have for additional compensation or economic loss of any kind or character arising out of its performance of the Work or otherwise in connection with the Subcontract shall be made solely as provided for in Article 9.0. Subcontractor covenants not to assert any such claim against Owner or Owner's or Contractor's respective other contractors. Subcontractor covenants not to sue Owner, Contractor or Owner's or Contractor's respective other contractors on any such claim, whether based upon delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, and agrees that it shall assign any

such claim it may have in that regard to Contractor if and when requested by Contractor in connection with any adjustment pursuant to Article 9.0 hereof.

42.0 DAMAGES

42.1 In no event shall Owner, Contractor, or any of their respective parents, affiliates, subsidiaries, representatives or any directors, officers, or employees of any of the foregoing be liable to Subcontractor or any of its Lower Tier Subcontractors, whether based on delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, for any consequential, special, incidental, indirect, exemplary, multiple or punitive damages or damages arising from or in connection with loss of use or loss of revenue or profit, actual or anticipated or otherwise, and Subcontractor hereby releases Owner, Contractor and each of their respective parents, affiliates, subsidiaries, representatives or any directors, officers and employees from any such liability.

43.0 GOVERNING LAW AND VENUE

43.1 This Subcontract, unless it expressly provides to the contrary in the document entitled "Subcontract Order", shall be governed by and construed in accordance with the laws of the State of Michigan, excluding any provisions or principles thereof which would require the application of the laws of a different jurisdiction. Any litigation initiated by and between the Parties arising out of or relating to this Subcontract shall be conducted in the federal or state court of jurisdiction in the State whose laws govern this Subcontract, and Contractor and Subcontractor each consent to the jurisdiction of such court. In the event a dispute arises between the Contractor and Owner in connection with the Work or Subcontract, Contractor shall have the right to implead Subcontractor into the dispute resolution proceeding and Subcontractor hereby agrees to any such impleader.

44.0 ARTICLE HEADINGS

44.1 The Article headings herein have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of anything herein contained nor govern the rights and liabilities of the Parties.

45.0 COMPLETE AGREEMENT

45.1 The Subcontract constitutes the complete agreement between the Parties with respect to the subject matter hereof, and supercedes all prior written or oral contracts, agreements, representations and/or understandings of any kind or nature that the Parties may have entered into or had prior to the date hereof with respect to the subject matter hereof.

45.2 Subcontractor shall have accepted these Conditions provided Subcontractor has received these Conditions, and either a) received payment; or b) started performance of the Works.

46.0 BACKCHARGE; OFFSET

46.1 Contractor may accomplish the required redesign, repair, rework or replacement of any Work by the most expeditious means available, and backcharge Subcontractor for the costs and expenses incurred.

46.2 If Subcontractor requests Contractor to provide the services of its personnel or equipment, or provide permanent, temporary or consumable materials for Subcontractor's use, Contractor will charge Subcontractor for such items in accordance with Articles 46.4 and 46.6 below.

46.3 In the event of emergency, Contractor may proceed to perform any Work and backcharge Subcontractor for Contractor's costs and expenses.

46.4 The cost of such backcharge shall include but not be limited to:

- a. fully burdened labor costs;
- b. material costs including shipping and handling;
- c. subcontractor or subsupplier costs directly related to performing the backcharge work;
- d. equipment and tool rentals at Contractor customary rates; and
- e. a factor of fifty percent (50%) shall be applied to the total of the foregoing Articles 46.4(a), (b) (c) and (d) for indirect, overhead and administrative costs.

46.5 Prior to completion of the Work, backcharge costs will be treated as a Subcontract Price adjustment. Subcontractor shall pay the invoice within ten (10) days from receipt. Contractor's right to backcharge is in addition to any and all other rights and remedies provided in the Subcontract or by law. The performance of backcharge work by Contractor shall not relieve Subcontractor of any of its responsibilities under the Subcontract.

46.6 Independently of its backcharge rights, Contractor shall at any time and from time to time be entitled, but not required, to offset, against any obligation of Contractor to Subcontractor, any obligation of Subcontractor to Contractor, by giving Subcontractor written notice thereof.

47.0 PRODUCT INFORMATION

47.1 If any design change at any time ever occurs (or is seriously contemplated) to any component of the Work to be supplied under the Subcontract, Subcontractor shall immediately advise Contractor of such design change, and concurrently provide Contractor with a full written description of such design change, the reasons for it, and all known or suspected impacts, implications, consequences, and details thereof, particularly including but not limited to any matters relating to performance, configuration, size, weight and durability. If Contractor is not willing to accept such design change, any component, material, or other item of any kind incorporating or affected by such design change shall be deemed defective and therefore rejected under the Subcontract and Subcontractor shall immediately cause such component, material or other item to be replaced at its sole cost and risk with a component, material or item which does not incorporate and is not affected by such design change.

47.2 Prior to commencing any Work under the Subcontract, Subcontractor shall furnish to Contractor in detail all pertinent information concerning the operating history of any product to be furnished hereunder, particularly including but not limited to any deficiencies, problems or customer complaints relating thereto. Subcontractor shall thereafter promptly keep Contractor current with regard to any new developments regarding such operating history, particularly including but not limited to any deficiencies, problems or customer complaints.

48.0 INDEPENDENT CONTRACTOR

48.1 Subcontractor is an independent contractor, and neither an employee, agent, nor representative of the Contractor or the Owner, and shall maintain complete control of, and responsibility for, its Lower Tier Subcontractors, employees, agents, means, methods, and operations.

49.0 SUBCONTRACTOR'S DRAWINGS, SPECIFICATIONS, AND CALCULATIONS

49.1 Drawings, specifications, and calculations submitted by Subcontractor to the Contractor with a request for review, may be reviewed and commented upon by the Contractor. Such review and comment shall relate only to general conformance

with the specifications and for confirmation of physical interface of items shown with related systems. In no event will such review and comment relieve Subcontractor of the responsibility of compliance with all requirements of the Subcontract.

49.2 Subcontractor shall furnish all submittals and other documentation when and as required by the Subcontract. All materials specifically prepared or developed by Subcontractor or any of its Lower Tier Subcontractors to perform Subcontractor's obligations under the Subcontract shall become the property of Contractor upon payment for or termination of Subcontractor's Work, whether delivered to Contractor or not, and shall be delivered to Contractor on written request.

50.0 EQUAL OPPORTUNITY

50.1 The Subcontractor agrees that neither it or its Lower Tier Subcontractors will discriminate against any employee or applicant for employment to be employed in the performance of this Subcontract with respect to hire, tenure, terms, conditions or privileges of employment, or matters directly or indirectly related to employment because of age, sex, height, weight, marital status, race, color, religion, national origin, ancestry, disability or veteran status. Subcontractor also agrees to comply with all applicable provisions of 41 CFR 60-1.4 Equal Opportunity clause as amended. Breach of this covenant may be regarded as a material breach of this Subcontract.

50.2 The Subcontractor agrees that minority business enterprises (MBE) shall have the opportunity to meaningful participation in all work. The degree of utilization of minority business firms will be dictated by requirements by the Prime Contractor or Owner requirements and participation in the program will be mandatory.

END OF GENERAL CONDITIONS