



Blanket Subcontract Agreement
(Subcontract Work Pursuant To Individual Purchase Orders)

SUBCONTRACTOR:	SUBCONTRACTOR CONTACT:
CONTRACTOR: Copeland Electric, LLC 186 Venable Ln Monroe, LA 71203	CONTRACTOR CONTACT: Logan Fox 318-322-9865 loganf@copelanelectric.com

This Subcontract Agreement (this "Agreement" or "Subcontract Agreement") is entered into on _____, (the "Effective Date") between Copeland Electric, LLC, a Louisiana limited liability company ("Contractor"), and _____, a(n) ("Subcontractor"). For the considerations herein expressed, the Contractor and Subcontractor do hereby mutually agree as follows:

The terms of this Subcontract Agreement shall control all purchase orders issued by Contractor to Subcontractor and accepted by Subcontractor, which acceptance shall be deemed to have occurred on the earlier of Subcontractor's commencement of the Subcontract Work (as defined in Section 4(A) below) or, if earlier, Subcontractor's execution or written acceptance of such purchase order (each, a "Purchase Order"), and shall control any Subcontract Work performed by Subcontractor, either by Contractor's written request, verbal request or otherwise, from the Effective Date of this Agreement until the date this Subcontract Agreement is terminated as provided herein. In the event that Subcontractor commences the Subcontract Work after issuance of the Purchase Order applicable thereto but before Subcontractor has executed this Subcontract Agreement, Subcontractor shall be deemed to have accepted and shall be bound by the terms and conditions of this Subcontract Agreement in the form last submitted by Contractor to Subcontractor. All Purchase Orders shall be incorporated by reference and made a part of this Subcontract Agreement.

This Subcontract Agreement supersedes any prior written or oral agreements, Subcontractor's purchase order and any terms and conditions forming any part of, attached to or referred to in Subcontractor's proposals notwithstanding anything to the contrary stated in such terms and conditions or proposals. Any additional or different terms and conditions set forth in, attached to or referred to in Subcontractor's proposals, invoices, purchase orders, acknowledgments or similar documents, or in Subcontractor's electronic acknowledgments or communications, are hereby objected to by Contractor and will not be binding upon Contractor unless specifically agreed to in writing and signed by Contractor's Authorized Representative (as defined in Section 24 below).

The term "Contract Documents" includes this Subcontract Agreement, all Purchase Orders and the Prime Contract (as defined in Section 3 below) and all of their respective attachments and all other documents specifically referenced therein, including, but not limited to, all exhibits, appendices, advertisements for bids, instructions to bidders, bid documents, addenda, Change Orders (as defined under Section 11(A) below), plans and drawings ("Plans and Drawings"), specifications ("Specifications"), general conditions, special terms and conditions that apply, guarantees, and all other documents forming, or by reference, made a part of this Subcontract Agreement.

1 - Term

The term of this Subcontract Agreement shall be from the Effective Date until the end of time, unless: (a) terminated by either party hereto by providing thirty (30) days written notice to the other party (provided, however, that such notice shall not be effective to terminate the parties' respective rights and obligations hereunder with respect to the performance and completion of any Purchase Orders not yet completely performed at the time of such termination, unless such Purchase Order is likewise being terminated by Contractor as provided herein);

or (b) terminated by Contractor as provided herein.

2 - Priority of Documents

In the event of any conflict between any of the Contract Documents, such conflict shall be resolved using the following order of precedence and as applicable to the Contract Documents: (a) Change Orders; (b) the terms and conditions expressly stated in Purchase Orders (excluding pre-printed terms and conditions); (c) this Subcontract Agreement; (d) the Prime Contract and its exhibits, appendices and other attachments (each having the order of precedence as set forth in the Prime Contract); (e) the Plans and Drawings; (f) the Specifications; and (g) any other documents identified or referenced in or attached to the Purchase Order; provided that if the Prime Contract incorporates or otherwise includes the imposition of any Federal Acquisition Regulations (FAR), such Federal Acquisition Regulations, as so incorporated or otherwise included, shall have the same force and effect as if printed in full text herein, and where any ambiguities, discrepancies, conflicts, or inconsistencies exist between such Federal Acquisition Regulations and any other Contract Document, such Federal Acquisition Regulations shall prevail. Notwithstanding the foregoing, Contractor shall decide priority where any ambiguities, discrepancies, conflicts, or inconsistencies exist between any documents which have equal precedence to each other or for which the order of precedence is not resolved pursuant to the preceding list. Notwithstanding the foregoing or anything herein to the contrary, any boiler plate terms and conditions which may appear in or be referred to in any Subcontractor's proposal, estimate, quote or bid which may be identified or referenced in or attached to the Purchase Order shall be null and void and otherwise shall have no force or effect between Contractor and Subcontractor.

3 - Prime Contract

Subcontractor acknowledges that the Subcontract Work may be a part of a larger project ("Project") to be performed under a separate prime contract (as applicable to the Subcontract Work or Subcontractor's other obligations hereunder, "Prime Contract") between Contractor and a prime contractor or a subcontractor (of any tier) to another subcontractor or prime contractor or directly with an owner (collectively as to any such prime contractor, subcontractor (of any tier) and owner, "Owner"). If so, as between Contractor and Subcontractor under this Subcontract Agreement, to the extent applicable to the Subcontract Work and Subcontractor's obligations hereunder, (a) Subcontractor hereby assumes toward and accepts for the benefit of Contractor (and, as determined by Contractor, for the benefit of Owner) all of the obligations and responsibilities which the Contractor, by and through the Prime Contract, has toward and for the benefit of Owner (and of any parties to be indemnified by Contractor under the Prime Contract) and further agrees that it is bound to Contractor to the same extent that Contractor is bound to Owner (and any parties to be indemnified by Contractor under the Prime Contract) under the Prime Contract; (b) Contractor has all of the same rights and remedies against Subcontractor which Owner (or any parties to be indemnified by Contractor under the Prime Contract) has against Contractor under the Prime Contract; and (c) Subcontractor hereby makes all of the same representations, warranties and covenants to Contractor which Contractor has made to Owner under the Prime Contract. Further, to the extent that the Prime Contract requires that Subcontractor undertake any obligations for the direct benefit of Owner or any other persons or entities identified in the Prime Contract, Subcontractor hereby undertakes and assumes such obligations. Subcontractor acknowledges that it has received a copy of the Prime Contract, provided that Contractor may have redacted and has the right to redact confidential or proprietary information.

4 - Scope of Work

- A. Subcontractor shall furnish all labor, supervision, materials, equipment, tools, supplies and other services required to complete the work and services as described in each Purchase Order in strict compliance with the Contract Documents applicable thereto (collectively, "Subcontract Work").
- B. The price or other compensation to be paid Subcontractor for the Subcontract Work shall be specified in the Purchase Order applicable thereto ("Subcontract Price"). Unless otherwise specified in the Purchase Order, each Subcontract Price which is to be paid on a fixed or lump sum basis shall not be subject to escalation of any nature and shall apply without regard to the difficulty of the applicable Subcontract Work, hours expended or tools and equipment used in performing such Subcontract Work. In the event that the Subcontract Price or any portion thereof is to be paid on a time and material, unit price or other reimbursable basis, the applicable rates for the Subcontract Work shall be as set forth in the rate schedule set forth in or attached to the Purchase Order for such Subcontract Work or as otherwise shall be expressly agreed to in writing by Contractor.
- C. Subcontractor shall not commence performance of the Subcontract Work without receipt of Contractor's

signed Purchase Order applicable thereto. Subcontractor's commencement of the Subcontract Work, as stipulated in the Purchase Order, shall be deemed an acceptance of such Purchase Order, this Subcontract Agreement and the other Contract Documents. Any work performed without Contractor's signed Purchase Order for such work shall not be considered compensable work and Subcontractor shall assume all risk associated with such work being performed.

- D. Subcontractor recognizes that all of the labor, supervision, materials, equipment, tools, supplies and other services intended to be included in the Subcontract Work may not be expressly mentioned in the Contract Documents. Subcontractor shall furnish all labor, supervision, materials, equipment, tools, supplies and other services expressly mentioned in the Contract Documents and all labor, supervision, materials, equipment, tools, supplies and services not specified or mentioned therein which are reasonably inferable to be usual and/or necessary to complete the Subcontract Work. All such labor, supervision, materials, equipment, tools, supplies and other services not specified or mentioned shall be furnished at no extra cost, as if they were expressly required by the Contract Documents.

5 - Performance of the Work

- A. Time is of the essence for performance of the Subcontract Work. Subcontractor shall begin performance of the Subcontract Work when notified by Contractor to proceed and shall perform the Subcontract Work in accordance with the particular schedule established by the applicable Purchase Order or other Contract Documents or as otherwise set by Contractor (each, a "Schedule").
- B. If Subcontractor has reason to believe that the Subcontract Work will not be performed or completed in accordance with the Schedule, Subcontractor shall immediately and no later than twenty four (24) hours after Subcontractor becomes aware of such delay, notify Contractor of the nature and extent of such delay, along with an action plan which shall be acceptable to Contractor to remedy such delay; provided, however, that nothing herein shall affect the applicability of or excuse performance under Sections 12 or 26 of this Subcontract Agreement. If Contractor believes that the Subcontract Work is not being performed according to the Schedule, Contractor may require Subcontractor to increase its manpower and equipment, increase working hours or to otherwise accelerate its performance until the Subcontract Work is back on Schedule. Such increases and/or acceleration shall be at no additional cost to Contractor.
- C. Contractor reserves the right at any time to direct the Subcontractor to schedule, re-schedule, or re-sequence the order of the Subcontract Work. Further, Subcontractor shall cooperate with Contractor and its other subcontractors and Owner and its other contractors to coordinate the execution of their respective work scopes.
- D. Subcontractor warrants that, prior to agreeing on the Subcontract Price specified in any Purchase Order, it has examined and verified or will examine and verify (i) each jobsite (each, a "Site") specified in the applicable Contract Documents or Purchase Order and satisfy itself as to the nature and location of the Subcontract Work; the general and local conditions of the applicable Site, including, without limitation, those related to transportation, handling and storage of materials, labor market, water, power, roads, weather and ground conditions and similar conditions; the location and existence of existing structures, improvements and obstructions; and all other matters upon which information is reasonably obtainable and which can in any way affect Subcontractor's performance of the Subcontract Work or the cost thereof, and (ii) the Contract Documents, including, without limitation, any applicable Plans and Drawings and Specifications. Subcontractor shall be responsible for any and all costs arising from its failure to comply with the foregoing warranties and obligations, including, without limitation, any and additional costs and expenses which Contractor incurs in connection with its or its other subcontractors' work with respect to the Prime Contract as a result of Subcontractor's failure to comply with the foregoing warranties and obligations when performing the Subcontract Work.
- E. Subcontractor will provide only skilled, competent workers and supervision for the performance of the Subcontract Work and shall ensure harmonious labor relationships among its workers at the Site. Subcontractor shall immediately remove from the Site, when requested to do so by Contractor or Owner, any person to whom Contractor or Owner reasonably objects, and such person may not thereafter re-enter the Site without Contractor's or Owner's written consent.
- F. Subcontractor is solely responsible for the quality of the Subcontract Work. Contractor and/or any

applicable Owner have the right to inspect any portion of the Subcontract Work, whether such work is on or off the Site and at any time or phase. Subcontractor shall give Contractor reasonable advance notice when any portion of the Subcontract Work is ready for inspection. If adequate reasonable notice is not provided or if any Subcontract Work is covered before Contractor and/or any applicable Owner performs an inspection, Subcontractor shall, at Contractor's and/or any applicable Owner's option, uncover the Subcontract Work at Subcontractor's cost. Neither the inspection nor the failure to inspect by Contractor and/or Owner shall be considered an acceptance of the Subcontract Work or serve to release Subcontractor from any of its obligations under this Subcontract Agreement or any Contract Documents. Further, review, approval, consent, instruction, assistance or advice and the like given to Subcontractor (or not given, as the case may be) or any inspection, testing or witnessing of tests, by or on behalf of Contractor or Owner, shall not relieve Subcontractor from any of its obligations or responsibilities under the Contract Documents, including, without limitation, sole responsibility for the quality, accuracy and sufficiency of the Subcontract Work. Any approval by Contractor or Owner of the Subcontract Work shall not constitute permission to proceed, and such approval shall not create or transfer any responsibility on Contractor or Owner for the accuracy or sufficiency of any Subcontract Work or any materials, samples or documents submitted by Subcontractor for approval. If any tests or inspections reveal that the Subcontract Work, or any portion thereof, is not in compliance with the Contract Documents, Contractor may, without risk or liability, reject the Subcontract Work or that portion not in compliance, and Subcontractor must promptly make any repairs, replacements or modifications necessary to achieve compliance and re-perform the tests at its own expense. In addition, Contractor shall retain all other rights and remedies specified elsewhere in this Subcontract Agreement, any Contract Documents or at law.

- G. Contractor and/or Owner have the right at any time to occupy or use any portion of the Subcontract Work that has been partially or fully completed prior to final inspection and acceptance when it is useful or necessary to do so. Such occupancy or use shall not be deemed an acceptance or approval of the Subcontract Work, nor shall it relieve Subcontractor of its obligations hereunder or under any Purchase Order or other Contract Document, including obligations to complete the Subcontract Work and to remedy any defects in material and workmanship as provided in the Contract Documents. Notwithstanding the occupancy or use of the Subcontract Work or any portion thereof, the warranty period will not commence until Final Completion (as defined in Section 40 below) of the Subcontract Work.
- H. If Contractor furnishes material and/or supplies to Subcontractor in connection with the Subcontract Work, then Subcontractor shall be responsible for and shall bear the risk of loss or damage to all such materials and/or supplies upon delivery to Subcontractor. Materials and/or supplies lost or damaged after delivery to Subcontractor, from any cause whatsoever, shall be replaced by and at the expense of Subcontractor.
- I. Subcontractor may be required to prepare detailed reports concerning the Subcontract Work, including but not limited to, construction schedules, manpower schedules, material delivery status reports, expenditure reports, time and material reports, depending on the requirements of the Subcontract Work, the Project and/or the Owner. If required, such reports shall be prepared and submitted to Contractor within ten (10) days of Contractor's issuance of the Purchase Order applicable thereto or as otherwise required in the Contract Documents and shall be updated on a weekly basis, or other interval as agreed to by Contractor and Subcontractor, to reflect actual progress of the Subcontract Work.
- J. Subcontractor shall be responsible to Contractor for any costs or damages for which Contractor becomes liable to Owner or which Contractor otherwise incurs as a result of any failure by Subcontractor to abide by the terms of this Subcontract Agreement or any Contract Documents, including, but not limited to, any delay or liquidated damages.
- K. In the event that liquidated damages have been specified in the Purchase Order or are otherwise applicable under the Contract Documents, Contractor and Subcontractor agree that liquidated damages have been agreed upon with respect to the applicable delay or failure to perform because consequential damages were uncertain and difficult to determine with exactness at the time the applicable Purchase Order was issued. Contractor and Subcontractor further agree that the amount of liquidated damages, as so agreed, is fair and not out of proportion to the probable loss and is not a penalty and that such liquidated damages shall not limit or restrict Contractor's right to pursue its other rights and remedies with respect to Subcontractor's other delays or failures to perform under the Contract Documents and, in any event, shall not limit or restrict Contractor's right to exercise its rights and remedies under Section 14 hereof, including, without limitation, with respect to the delay on which such liquidated damages are based.

6 - Payments

- A. Contractor will pay to Subcontractor monthly, partial or other periodic progress payments within sixty (60) days after Contractor's receipt of a properly formatted and completed invoice for same or as otherwise specified by each Purchase Order, but only to the extent the Subcontract Work is approved by Contractor and subject to Subcontractor's compliance with the terms and conditions of the Contract Documents, including, without limitation, Section 8 below. Each monthly, partial or other periodic progress payment shall be subject to retention of ten percent (10%) or such other retention amount as may be specified in the Purchase Order.
- B. Any payment due Subcontractor under the Contract Documents may be withheld in whole or in part by Contractor on account of: (a) defective materials or work; (b) claims, liens, or reasonable belief that such may exist; (c) any breach by Subcontractor of any provision or obligation of the Contract Documents; (d) a reasonable doubt that the Subcontract Work can be completed for the balance of the applicable Subcontract Price then unpaid; (e) a reasonable doubt that Subcontractor, for any reason, is able to complete the Subcontract Work in accordance with the Contract Documents; (f) failure of Subcontractor to submit any required documentation or deliverables as required by the Contract Documents, including but not limited to full or partial lien waivers; (g) any debt of any kind whatsoever owed to Contractor by Subcontractor; (h) failure of Subcontractor to properly pay any of its sub-subcontractors, vendors or suppliers; or (i) the Owner's failure for any reason to pay Contractor for the Subcontract Work to which such payment is applicable. If the foregoing causes are promptly remedied or adjusted to Contractor's satisfaction, the withheld payment shall be made. If the said causes are not so remedied or adjusted, Contractor may remedy the same for Subcontractor's account and charge the entire cost thereof to Subcontractor, as provided herein.
- C. Contractor retains the right to set-off against any amount payable under this Subcontract Agreement or any Purchase Order or Contract Documents any and all present and future indebtedness of Subcontractor to Contractor arising from this Subcontract Agreement or any Purchase Order or Contract Document or any other transaction between Contractor and Subcontractor.
- D. No payment made to Subcontractor shall be construed as an acceptance or approval of any Subcontract Work, nor shall such payment constitute a waiver of any claim or right that Contractor may then or thereafter have against Subcontractor, including, without limitation, a claim that such payment or the amount thereof was paid in error and the right to recovery thereof.
- E. Contractor shall make the final payment of the Subcontract Price (including retention) due and owing to Subcontractor, subject to withholding as permitted hereunder, within sixty (60) days after: (a) Contractor's receipt of a properly formatted and complete final invoice; (b) complete performance of the Subcontract Work; (c) the occurrence of Final Completion of the Subcontract Work; (d) Contractor's receipt from Subcontractor of all final waivers and releases of liens in such form as Contractor shall require; (e) Contractor's receipt from Subcontractor of a Contractor's sworn statement that all payrolls, bills for materials and equipment, and all other indebtedness connected with the Subcontract Work have been paid or otherwise satisfied in full; (f) return of all tools, equipment, materials, property, goods, documents and supplies that Subcontractor is required to return to Contractor in the condition required by the Contract Documents; (g) completion and submittal of all other documentation required by the Contract Documents; and (h) the receipt by Contractor from the Owner of all amounts under the Prime Contract applicable to such final payment and the Subcontract Work. Subcontractor's acceptance of final payment shall constitute Subcontractor's waiver of, and its release of Contractor from, any and all claims by Subcontractor arising out of or in connection with the Subcontract Work or the Project,
- F. All Subcontractor invoices must contain, at a minimum, the job number, the purchase order number, dates of work performed and description of the work being billed.
- G. Notwithstanding anything in the Contract Documents to the contrary, Subcontractor acknowledges and agrees that any right to payment it has under such Contract Documents is expressly conditioned upon Contractor's receipt from the Owner of the amounts applicable to such payment under the Prime Contract.
- H. In the event it reasonably appears to Contractor that any of the labor, materials and other bills furnished or incurred in the performance of the Subcontract Work are not being currently paid, Contractor may take all such steps as Contractor determines are necessary or appropriate to insure that any payments of the Subcontract Price (including, without limitation, any partial, interim progress or final payments thereof) are utilized to pay such bills and that such bills are otherwise paid in full, which steps may include, without limitation, paying such unpaid bills directly and setting off such payments against the Subcontract Price with

any payments made by Contractor in excess of the remaining balance of the Subcontract Price being due from Subcontractor to Contractor promptly on demand. Contractor shall not be liable to Subcontractor for any such payments made in good faith. Notwithstanding anything in this Subcontract Agreement to the contrary, nothing herein shall confer upon any sub-subcontractor or other supplier or vendor of Subcontractor any right to seek payment from Contractor nor shall Contractor have any liability therefor.

- I. If any progress payments are made to Subcontractor for the Subcontract Work, to the extent of such payments, Subcontractor grants to Contractor a first priority security interest in Subcontractor's inventory of materials used to manufacture or fabricate the Subcontract Work and in partially fabricated components of the Work, wherever located, to secure: Subcontractor's obligations to perform the Subcontract Work according to the Contract Documents; all advances evidenced by Contractor's payments of Subcontractor's applications for payment with respect to such materials; and all of the Subcontractor's liabilities to Contractor now existing or later incurred, direct or contingent.

7 - Bonds

If required by Contractor, as specified in each Purchase Order, Subcontractor shall, prior to commencement of the Subcontract Work under such Purchase Order, furnish to Contractor a payment and performance bond for one hundred percent (100%) of the Subcontract Price specified in such Purchase Order, the cost of which shall be included in the Subcontract Price. Such bonds shall be executed on forms furnished by or acceptable to Contractor and by a surety or sureties satisfactory to Contractor. As a minimum requirement, the surety or sureties providing such bonds must be listed as acceptable to the United States Government in the Department of the Treasury's Circular 570 (latest revision). All bonds shall extend to and cover the warranty period for the Subcontract Work and any extra work or changes performed by Subcontractor pursuant to the Contract Documents, unless advised otherwise in writing by Contractor. Should any surety refuse to pay on a bond claim, the Subcontractor shall be liable to the Contractor for any and all reasonable attorney's fees, costs and expenses incurred by Contractor in pursuing payment of such a bond by the surety.

8 - Liens

- A. Unless arising out of Contractor's default of its payment obligations under this Subcontract Agreement, Subcontractor shall protect and defend Contractor, Owner and the Site and all other land and property upon which the Subcontract Work is to be performed, including, without limitation, all improvements, structures, equipment, machinery and other property now or hereafter placed thereon, from any and all claims, demands, losses, charges, encumbrances and/or any mechanic's, labor or supplier liens, stop notice rights or any similar right arising out of or in connection with the performance by Subcontractor or its sub-subcontractors of the Subcontract Work or any other work performed or materials and equipment furnished by Subcontractor or its sub-subcontractors, vendors or suppliers of any tier. Subcontractor hereby agrees to defend, indemnify and hold harmless Contractor and Owner, their employees, officers and agents from and against any and all such losses, costs, damages, costs and expenses, (including, without limitation, reasonable attorney's fees and costs) arising out of or in connection with any such lien, encumbrance, loss, stop notice, right, charge, claim or demand therefore.
- B. As a condition of any payment, Subcontractor shall provide to Contractor and, if required by Contractor, to Owner, completed and fully executed lien waivers and affidavits from Subcontractor and its sub-subcontractors, vendors and suppliers for the Subcontract Work, each of which shall be in such form as Contractor shall designate. The forms of lien waivers and affidavits to be furnished with respect to partial and interim progress payments are attached hereto as Exhibit A-1 and Exhibit A-2, and the forms of lien waivers and affidavits to be furnished with respect to final payments are attached hereto as Exhibit A-3 and Exhibit A-4.
- C. To the extent of any payments made by Contractor to Subcontractor, Subcontractor hereby waives and forever releases Contractor and/or Owner and their respective real property from any and all past, present, or future lien notices, lien claims, liens, encumbrances, security interests, or other lien rights or any kind based in whole or in part on the Subcontract Work.
- D. In the event that any lien claims or liens are filed against the Site or Contractor and/or Owner or their property by any of Subcontractor's sub-subcontractors, vendors or suppliers of any tier based in whole or in part on the Subcontract Work, then Subcontractor shall immediately and at no cost or expense to Contractor or Owner:

1. Pay and secure a full discharge of the lien(s);
 2. Cause the lien(s) to be discharged by filing a surety bond or depositing funds as required by law; and
 3. Take any other necessary steps required to resolve and discharge the lien(s).
- E. Should Subcontractor fail to take all the necessary steps required to release any such lien, Contractor may, at its sole discretion and without limiting or waiving any of its rights or remedies or that of any other interested person or party, pay the amount of such lien or lien claim (along with the necessary fees and costs) and invoice Subcontractor, or retain from payments then due or which thereafter become due to Subcontractor, an amount equal to such payments, fees and costs.
- F. With respect to all Subcontract Work and other work and materials for which Subcontractor has been paid by Contractor, Subcontractor shall indemnify and hold harmless the Contractor and Owner from and against all liabilities, losses, damages, judgments, penalties, fees, costs, or expenses (including, without limitation, reasonable attorney's fees and costs) due to any and all lien notices, lien claims, liens, encumbrances, security interests, or other lien rights of any kind filed by Subcontractor, or its sub-subcontractors, vendors or suppliers or any tier, which, in whole or in part, are based on the Subcontract Work.
- G. Subcontractor agrees and shall cause all of its sub-subcontractors, vendors and suppliers of every tier to contractually agree that no lien notices, lien claims, or liens shall be filed against the Contractor or Owner or their respective real property to the same extent that Subcontractor is obligated to Contractor and Owner herein.
- H. Notwithstanding the foregoing or anything in this Subcontract Agreement to the contrary, to the extent permitted by applicable law and required by the terms and conditions of the Prime Contract, Subcontractor agrees to provide in favor of Owner and the Project any other waivers of lien and rights to lien required by the terms and conditions of the Prime Contract.

9 - Compliance with Regulations

Subcontractor and its sub-subcontractors, vendors and suppliers of every tier are required to meet and comply with all local, state, federal and local ordinances, codes, statutes, acts, regulations and laws. All Subcontract Work shall be performed and provided in strict conformance with the latest edition of all applicable local, state, and federal ordinances, codes, statutes, acts, regulations and laws. Subcontractor shall defend, indemnify and hold harmless Contractor and Owner against all claims, demands, fines, causes of action and costs and expenses (including, without limitation, reasonable attorney's fees and costs) arising out of Subcontractor's or its subcontractor's and supplier's non-compliance with any such ordinances, codes, statutes, acts, regulations, laws or other regulatory requirements.

10 - Not Used

11 - Changes

- A. Contractor may, at any time, without invalidating this Subcontract Agreement or any Purchase Order and without notice to any surety (if bonds are required), by written notice or direction to Subcontractor, direct Subcontractor to make changes concerning the Subcontract Work (a "Change"). If a Change decreases the Subcontract Work to be furnished, the Subcontract Price shall be reduced on an equitable basis; provided that if effectuating such Change increases the cost or time to furnish the Subcontract Work and Subcontractor strictly complies with this Subparagraph (A) with respect to such Change, the Subcontract Price and/or Schedule may be equitably adjusted consistent with this Section 11 by a change order signed by Contractor and Subcontractor (a "Change Order").
1. Any equitable adjustment to the Subcontract Price under this Section 11 shall be determined on a lump sum or unit price basis as mutually agreed by Contractor and Subcontractor; provided that if such mutual agreement is not reached after good faith negotiations, such equitable adjustment shall be determined based upon Subcontractor's additional costs actually incurred as a direct result of effectuating such Change, with any purchases of equipment, materials, labor, equipment material and other items necessary to effectuate such Change only being purchased at competitive market prices for the area in which the Subcontract Work is performed (collectively, "Change Costs"), plus five percent (5%) thereof. As a condition precedent to any entitlement Subcontractor may have to an increase of the Subcontract Price for the Change applicable thereto, Subcontractor will provide Contractor with all purchase orders, invoices, sub-subcontractor quotes, and other documents and

records as Contractor may require in order to verify, to its satisfaction, that Subcontractor actually incurred the Change Costs applicable to and as a direct result of such Change. For the avoidance of doubt and by way of example and not limitation, labor costs which have been incurred as a result of poor or inefficient management or performance of the applicable Change shall not be considered a direct result of making such Change and shall not be recoverable by Subcontractor. Notwithstanding the foregoing or anything herein to the contrary, if such Change was made at the direction or request of Owner, any entitlement Subcontractor may have to an increase of the Subcontract Price as a result of such Change shall not exceed the amount paid by Owner to Contractor with respect to such Change.

2. Any equitable adjustment of the Schedule under this Section 11 shall not exceed the number of calendar days by which Subcontractor is able to demonstrate to Contractor's satisfaction that effectuating the applicable Change will delay the critical path progress of the Subcontract Work.
 3. Subcontractor shall not proceed with any Change without a Change Order except as provided in the following Subparagraph (B). Except as expressly provided in the following Subparagraph (B), if Subcontractor makes any Change in the Subcontract Work without a Change Order with respect to such Change, Subcontractor shall not be entitled to any adjustment in the Subcontract Price or Schedule and shall be responsible for any and all costs and damages incurred by Subcontractor, Contractor, Owner, or Subcontractor's sub-subcontractors arising out of such changed Subcontract Work.
 4. Subcontractor's right to receive any equitable adjustment to the Subcontract Price or Schedule as provided above shall be contingent upon Subcontractor having provided Contractor with the following written notices: (i) within three (3) days of receiving written notice or direction from Contractor to perform the applicable Change (or, if shorter, any applicable period of time as may be required by the Prime Contract), written notice that, as applicable, such Change will increase the cost and/or time to furnish the Subcontract Work, and (ii) within ten (10) days of receiving written notice or direction from Contractor to perform the applicable Change (or, if shorter, any applicable period of time as may be required by the Prime Contract), written notice of the extent to which, the cost and, if applicable, time to perform the Subcontract Work will be increased as a direct result of effectuating such Change, which notice shall include a reasonably detailed estimate and explanation evidencing such increased cost and, if applicable, time and all other information required by any applicable Prime Contract. Notwithstanding the foregoing or anything herein to the contrary, in no event shall Subcontractor be entitled to additional compensation or an extension of time with respect to a Change if Subcontractor has not timely furnished the above described notifications and information within the timeframes required for Contractor to timely submit corresponding notifications and information to Owner under the Prime Contract. Subcontractor's failure to strictly comply with the foregoing requirements with respect to any Change shall waive and release any claim Subcontractor may have with respect to such Change.
- B. Notwithstanding Subparagraph (A) above, in the event that Contractor has provided Subcontractor written notice or direction to perform a Change and Subcontractor has timely provided the notifications and information required under Subparagraph (A) above regarding such Change and Contractor and Subcontractor cannot agree on the equitable adjustment to the Subcontract Price or Schedule as called for in said Subparagraph (A) with the result being that no Change Order is signed by both the Subcontractor and Contractor or in the event that Subcontractor is not entitled to or has otherwise not timely provided the notifications and information required under Subparagraph (A) regarding such Change, Subcontractor shall proceed with the applicable Change without the required written Change Order if Contractor so directs in writing, and any applicable disagreement under Subparagraph (A) above with respect to Subcontract Price or Schedule adjustment shall be referred for dispute resolution under Section 21 below. Under no other conditions shall Subcontractor be entitled to an extension of time or to additional compensation regarding any Change without a Change Order signed by both Contractor and Subcontractor unless directed to do so in writing by Contractor and then only as expressly provided in this Section 11; and in no event shall Subcontractor be entitled to an extension of time or additional compensation with respect to any change or modification to the Subcontract Work that it performs without written notice or direction from Contractor.
- C. Subcontractor may propose changes to the Subcontract Work for Contractor's consideration; however, Contractor shall have no obligation to approve or accept any such proposed changes. Any and all changes in the Subcontract Work proposed by Subcontractor must be approved in writing by Contractor through a signed Change Order or as provided in Subparagraphs (A) and (B) above before Subcontractor may proceed with such changes.

- D. If Subcontractor believes that any act or omission of Contractor (including, without limitation an order, direction, instruction or determination) or any circumstance, condition or event affecting the Subcontract Work entitles Subcontractor to an adjustment to the Subcontract Price and/or the Schedule and such act or omission or circumstance, condition or event is not otherwise governed by Subparagraphs (A) and (B) above or Section 12 below (as to any such act, omission, circumstance, condition or event, "Other Change"), prior to incurring any additional costs with respect to such Other Change, Subcontractor shall (i) within five (5) days of the first occurrence of such Other Change (or, if shorter, any applicable period of time as may be required by the Prime Contract), provide Contractor with written notice of such Other Change, together with a reasonably detailed explanation of the basis of Subcontractor's claim with respect thereto, and (ii) within ten (10) days of the first occurrence of such Other Change (or such additional time as shall have been first approved by Contractor in writing, such approval not to be unreasonably withheld) (or, if shorter, any applicable period of time as may be required by the Prime Contract) a reasonable estimate of any adjustment of the Subcontract Price and/or the Schedule Subcontractor claims in connection with such Other Change and all other information required by any applicable Prime Contract. Notwithstanding the foregoing or anything herein to the contrary, if Owner may have liability for such Other Change, any entitlement Subcontractor may have to an increase of the Subcontract Price as a result of such Other Change shall not exceed the amount paid by Owner to Contractor with respect to such Other Change. Further, notwithstanding the foregoing or anything herein to the contrary, in no event shall Subcontractor be entitled to additional compensation or an extension of time with respect to any Other Change if Subcontractor has not timely furnished the above described notifications and information within the timeframes required for Contractor to timely submit corresponding notifications and information to Owner under the Prime Contract. Subcontractor's failure to strictly comply with the foregoing requirements with respect to any Other Change shall waive and release any claim Subcontractor may have with respect to such Other Change.
- E. No course of dealing or course of performance between the Contractor and Subcontractor shall be considered as, nor shall it constitute a Change Order or a request for same or be a basis for an increase in any Subcontract Price or an extension of time to any Schedule.
- F. A Change Order shall be deemed to resolve and otherwise fully satisfy all claims, demands, impacts, requests, issues, and disputes which were or have or could have been or could be raised by Subcontractor in connection with the Change to which such Change Order relates and shall constitute Subcontractor's sole and exclusive remedy with respect to any increased costs, impacts, damages, delays and/or losses resulting or which could result from such Change, whether known or unknown or foreseeable or unforeseeable.

12 - Delay

- A. Notwithstanding anything in this Subcontract Agreement or any Contract Document to the contrary, Subcontractor shall not be entitled to any extension of time or change in the Subcontract Price specified in any Purchase Order for delays due to an act or omission of the Subcontractor, its sub-subcontractors, vendors, suppliers of any tier or anyone for whose acts any of them may be liable and such delays shall be remedied by the Subcontractor at no additional cost to Contractor.
- B. If Subcontractor is delayed at any time during the progress of the Subcontract Work by any Excusable Delay (as defined in Subparagraph (F) below), Subcontractor may be excused from the timely performance of the Subcontract Work but only to the extent Subcontractor is able to demonstrate to Contractor's satisfaction that such Excusable Delay delayed the critical path progress of the Subcontract Work and only if Subcontractor gives written notice to Contractor of the nature of such Excusable Delay within twenty-four (24) hours after the commencement of the event giving rise to such Excusable Delay (or, if shorter, any applicable period of time as may be required by the Prime Contract) and gives Contractor a reasonably detailed written explanation evidencing the extent and direct impact of such Excusable Delay on the critical path progress of the Subcontract Work and all other information required by any applicable Prime Contract within five (5) days after the commencement of such event giving rise to such Excusable Delay (or, if shorter, any applicable period of time as may be required under the Prime Contract). The foregoing notwithstanding, if a Prime Contract is applicable to the Subcontract Work affected by the Excusable Delay, Subcontractor shall only be excused from the timely performance of the Subcontract Work to the extent such Excusable Delay excuses Contractor's timely performance under the Prime Contract with respect to such Subcontract Work and then only if Subcontractor timely complies with the foregoing notice and explanation requirements; provided that

if the Excusable Delay arises directly out of the acts or omissions of Contractor or any of its other subcontractors and if the Excusable Delay is not due (in whole or in part) to any act or omission of Subcontractor or its sub-subcontractors, vendors, suppliers of any tier or anyone for whose acts any of them may be liable, then Subcontractor shall be entitled to an extension of time for performance of the Subcontract Work to the extent the Subcontract Work is delayed as a direct result of such Excusable Delay, provided that Subcontractor timely complies with the foregoing notice and explanation requirements. Notwithstanding anything in this Subcontract Agreement to the contrary, Subcontractor shall not be excused hereunder with respect to any Excusable Delay to the extent of any delay, caused by the acts or omissions of Subcontractor, its sub-subcontractors, vendors, suppliers of any tier or anyone for whose acts any of them may be liable, that is concurrent with such Excusable Delay.

- C. Unless Contractor is able to secure a Change Order from Owner for an increase in cost resulting from any delay (including, without limitation, an Excusable Delay), an extension of time, as provided in Subparagraph (B) above, shall be Subcontractor's sole and exclusive remedy for such delay. In no event shall Subcontractor be entitled to any monetary compensation for any such delay in excess of the amount that Contractor is able to recover from Owner with respect to such delay, whether or not such delay is determined to be an Excusable Delay. The foregoing notwithstanding, if any such delay is an Excusable Delay directly caused by the breach or neglect of Contractor or any of its other subcontractors (excluding Subcontractor and its sub-subcontractors of any tier) and Contractor has timely received the notice and explanation required under Subparagraph (B) above with respect to such Excusable Delay (which explanation shall be delivered together with a reasonably detailed explanation of any claimed increased costs and shall evidence that such costs are a direct result of such Excusable Delay in order to be effective), Subcontractor shall be entitled to be reimbursed for any increased costs incurred to the extent directly resulting from such Excusable Delay, which reimbursement (together with any extension of time to which Subcontractor may be entitled under this Section 12 regarding such Excusable Delay) shall constitute Subcontractor's sole and exclusive remedy for such Excusable Delay.
- D. Subcontractor shall be liable to Contractor for any and all damage claims and costs, including but not limited to delay or liquidated damages, assessed against Contractor by Owner for delays or failures caused by Subcontractor or its sub-subcontractors, vendors or suppliers of any tier or anyone for whose acts any of them may be liable. Such claims and costs shall be immediately reimbursed by Subcontractor to Contractor upon notification to Subcontractor of such obligation.
- E. Nothing in this Section 12 shall affect the applicability of or excuse performance under Sections 5, 26 or 28 of this Subcontract Agreement
- F. An "Excusable Delay" is any of the following: (i) acts of God or a public enemy; (ii) fires, floods, explosions or other catastrophes unless caused by the delayed party; (iii) epidemics or quarantines; (iv) strikes, slowdowns, lockouts or labor stoppages (if the delayed party is Subcontractor, such strikes, slowdowns, lockouts or labor stoppages must have occurred on a national basis) unless caused by the delayed party's failure to comply with applicable collective bargaining or other labor agreements; (v) freight embargoes; (vi) the neglect of the other party or any of its employees or other contractors or their subcontractors; or (vii) any other unforeseeable event or condition not subject to the reasonable control of and not caused (in whole or in part) by the delayed party (as to any such event, "Excusable Delay"). Contractor shall not be liable to Subcontractor for a delay in Contractor's performance hereunder (and shall be excused from timely performance hereunder to the extent) directly caused by any Excusable Delay. Subcontractor shall not be liable to Contractor for a delay in Subcontractor's performance hereunder (and shall be excused from timely performance hereunder to the extent) directly caused by an Excusable Delay provided that Subcontractor strictly complies with the terms and conditions of this Section 12 with respect to such Excusable Delay. The foregoing notwithstanding, no Excusable Delay shall excuse either party from the timely performance of its monetary obligations under this Agreement. Further, notwithstanding anything herein to the contrary, the following shall NOT constitute an Excusable Delay: (i) changes in economic conditions; (ii) if Subcontractor is the delayed party, changes in the financial condition of Subcontractor or any of its sub-subcontractors, vendors or suppliers of any tier; (iii) labor shortages or the inability to retain qualified personnel; (iv) normally occurring adverse weather conditions; (v) delays in transportation other than as a direct result of an Excusable Delay; or (vi) if Subcontractor is the delayed party, accidents or events that are in whole or in part caused by Subcontractor or any of its sub-subcontractors, vendors suppliers of any tier or anyone for whose acts any of them may be liable.

- G. In the planning and scheduling of the Subcontract Work, Subcontractor shall allow for the occurrence of normally occurring adverse weather conditions, including but not limited to, precipitation, temperature, wind, ice, and river level, typical for the time of year and locality of the Site and any location in which the Subcontract Work will be performed, and under no circumstances shall such normally occurring adverse weather conditions form a basis for an Excusable Delay. Adverse weather conditions will be considered normally occurring adverse weather conditions if they are consistent with NOAA Meteorological Data covering the preceding ten (10) year period for the locality of the Site (or, as applicable, the place where the Subcontract Work has been affected) at the applicable time of year. If Subcontractor believes that an abnormally occurring adverse weather condition is impacting or will impact its performance of the Subcontract Work as an Excusable Delay, in addition to strictly comply with the other terms and conditions of this Section 12, within two (2) days after the commencement of the applicable adverse weather event (or, if shorter, any applicable period of time as may be required under the Prime Contract) Subcontractor shall deliver to Contractor NOAA Meteorological Data covering the preceding ten (10) year period for the locality of the Site (and/or, as applicable, the place where the Subcontract Work is being performed and has been affected) at the applicable time of year. If Subcontractor fails to timely submit such information to Contractor or if a comparison of such NOAA Meteorological Data to the actual adverse weather conditions reflects that such actual adverse weather conditions are normally occurring adverse weather conditions for the locality of the Site (and/or, as applicable, the place where the Subcontract Work is being performed and has been affected) at the applicable time of year during the preceding ten (10) year period, the applicable adverse weather conditions shall be deemed normally occurring adverse weather conditions and not an Excusable Delay.
- H. Nothing in this Section 12 shall affect the applicability of or excuse performance under Sections 5 or 26 of this Subcontract Agreement

13 - Suspension of Work

- A. Contractor may suspend (as opposed to terminate, which is covered by Sections 14, 15 and 16 herein) performance of the Subcontract Work, from time to time in whole or in part, without cause and for Contractor's or Owner's convenience. In the event of a suspension, Contractor shall give Subcontractor a written notice of suspension specifying which portion of the Subcontract Work is suspended and when such suspension is to become effective ("Notice of Suspension").
- B. Promptly upon receiving a Notice of Suspension, except as otherwise directed by Contractor, Subcontractor shall (a) stop the Subcontract Work on the date and to the extent specified in the Notice of Suspension, and (b) place no further orders or subcontracts except as may be necessary for completing any portions of the Subcontract Work not specifically suspended, and (c) suspend all orders and subcontracts that relate to the suspended portions of the Subcontract Work, and (d) take such action as may be necessary and as directed by Contractor to protect and preserve the Subcontract Work completed or started prior to such notice.
- C. Unless the applicable suspension is the result of Subcontractor's failure to perform any of its obligations under the Contract Documents, Subcontractor may be entitled to an increase in the Subcontract Price for the affected Subcontract Work but only to extent of its incremental costs incurred as a direct result of such suspension, as agreed upon by the parties and for which Subcontractor is not otherwise compensated by any price adjustment provisions under the Contract Documents. Subcontractor shall take all reasonable steps to minimize these costs. Each such claim for price adjustment under this Section 13 shall be submitted to Contractor with fully documented and detailed support for all costs claimed for the suspension within five (5) days of Subcontractor's receipt of the applicable Notice of Suspension or in accordance with the timeframes set forth in the Prime Contract, if such timeframes are shorter, or such claim shall be deemed waived. Further, notwithstanding the foregoing or anything herein to the contrary, in no event shall Subcontractor be entitled to any additional compensation with respect to any suspension by Owner if Subcontractor has not timely furnished the above described notifications and information within the timeframes required for Contractor to timely submit corresponding notifications and information to Owner under the Prime Contract. Any compensation paid to Subcontractor with respect to such suspension shall constitute Subcontractor's sole compensation for such suspension.
- D. Notwithstanding the foregoing, should the Owner suspend the Prime Contract or any part that includes the Subcontract Work, Contractor's liability to Subcontractor under such suspension by Owner shall be limited solely to the extent of Contractor's recovery from Owner on Subcontractor's behalf with respect to suspension of the Subcontract Work.

- A. If Subcontractor breaches any provision of or otherwise fails to perform any of its obligations under this Subcontract Agreement or any other Contract Document, including, but not limited to: (a) failing to supply sufficient properly skilled workers, supervisory personnel or proper materials; (b) failing to maintain the Schedule or otherwise perform the Subcontract Work in a timely manner; (c) failing to make payments to workers, sub-subcontractors, vendors or suppliers; (d) failing to immediately correct safety violations; (e) failing to comply with any laws, rules, regulations or codes of any authority having jurisdiction of the Subcontract Work; (f) becoming insolvent or making a general assignment for the benefit of creditors; (g) filing or having filed against it a petition under any bankruptcy laws; (h) having its affairs placed in the hands of a receiver, trustee or assignee for the benefit of creditors; (i) abandoning the Subcontract Work; (j) becoming involved in litigation or labor problems (except to the extent such labor problem constitutes an Excusable Delay for which Subcontractor is entitled to an extension under Section 12 above) which could materially delay or adversely affect the Subcontract Work; (k) being otherwise unable or unwilling to perform the Subcontract Work as required under the Contract Documents; (l) failing to maintain or cause to be maintained any of the insurance coverage required under Section 19 hereof; or (m) violating any of the provisions of Section 45 hereof, then Contractor may declare Subcontractor to be in default of this Subcontract Agreement.
- B. In the event of default by Subcontractor, Contractor shall give Subcontractor notice of default. If Subcontractor fails, within three (3) days after receiving such notice, to correct the default or, within said three (3) day period, to commence to cure such default (which may include providing Contractor with a plan to correct such default satisfactory to Contractor) and thereafter to diligently pursue completion of such cure (and, in any event, in accordance with any applicable plan to correct such default satisfactory to Contractor), then Contractor, without prejudice to any of its rights or remedies, shall have the right to exercise its remedies under the following Subparagraph (C); provided that if such failure constitutes a breach or default or failure to perform under the Prime Contract for which a shorter cure period is provided and Subcontractor fails to cure such failure within said shorter cure period, Contractor shall be entitled to exercise its remedies under Subparagraph (C) below. The foregoing notwithstanding, if the default is (I) applicable under Subparagraph (A)(b), (d), (f), (g), (h), (l) or (m) above or under Subparagraph A(e) above and such Subparagraph A(e) default involves a material failure to comply with any laws, rules, regulations or codes of any authority having jurisdiction of the Subcontract Work or (II) is a breach or default or any other failure to perform under the Prime Contract for which no opportunity to cure is applicable under the Prime Contract before Owner is entitled to exercise any remedies in connection therewith (collectively, as to any such default under this sentence, "Immediate Default"), Subcontractor shall not be afforded any opportunity to cure such Immediate Default before Contractor shall be entitled to exercise its remedies under Subparagraph (C) below.
- C. If, after receiving a notice of default under the preceding Subparagraph (B), Subcontractor fails to timely correct the default or begin and continue correction of such default as provided in the preceding Subparagraph (B) to the satisfaction of Contractor or, if an Immediate Default is applicable, then Contractor may exercise any one or more of the following remedies immediately after providing a second written notice to Subcontractor of the applicable remedy:
1. Terminate this Subcontract Agreement.
 2. Terminate all or any of Subcontractor's outstanding Purchase Orders, including, without limitation, the Purchase Order to which the particular default is applicable.
 3. Terminate only a portion of the Subcontract Work under any outstanding Purchase Order.
 4. For any Purchase Order or applicable portion Subcontract Work that is terminated, Contractor may:
 - a. Perform all or portions of the Subcontract Work itself and/or hire other subcontractors as it deems necessary for the completion of the Subcontract Work, and charge the reasonable direct and indirect costs thereof, including, without limitation, reasonable overhead, profit and any and all attorney's fees and costs, to Subcontractor and/or,
 - b. Use any materials, equipment, appliances or tools furnished by or belonging to Subcontractor at the Site to complete the Subcontract Work; and/or,
 - c. Deduct all reasonable direct and indirect costs incurred by Contractor in performing the Subcontract Work, including, without limitation, reasonable overhead, profit and attorney's fees and costs, from any monies due or to become due Subcontractor.

5. Without terminating this Subcontract Agreement, any Purchase Order or any portion of any Subcontract Work, Contractor may:
- a. Suspend Subcontractor's performance of all or any portion of the Subcontract Work and perform and/or hire other subcontractors as Contractor deems necessary for the completion of the suspended Subcontract Work, and charge the reasonable direct and indirect costs thereof, including, without limitation, reasonable overhead, profit and any and all attorney's fees and costs, to Subcontractor and/or,
 - b. Use any materials, equipment, appliances or tools furnished by or belonging to Subcontractor at the Site to complete the suspended Subcontract Work; and/or,
 - c. Deduct all reasonable direct and indirect costs incurred by Contractor in performing the suspended Subcontract Work, including, without limitation, reasonable overhead, profit and attorney's fees and costs, from any monies due or to become due Subcontractor.

6. Without terminating this Subcontract Agreement, any Purchase Order or any portion of any Subcontract Work or suspending all or any portion of Subcontractor's performance of the Subcontract Work, Contractor may take all such steps as Contractor shall determine are necessary or appropriate in order to correct or otherwise make good the applicable event of default (including, without limitation, adding other subcontractors, personnel and other resources as necessary to overcome any associated delay and performing any inspections and testing required in connection therewith) and charge the reasonable direct and indirect cost thereof, including, without limitation, reasonable overhead, profit and any and all attorney's fees and costs to Subcontractor.

- D. In the case of an emergency which affects the safety of persons or property, Contractor may, notwithstanding the provisions of Section 45 or any other provision of this Subcontract Agreement or any other Contract Documents to the contrary, proceed to exercise any of the remedies set forth in the preceding Subparagraph (C) with respect to any Purchase Order, any portion of the Subcontract Work or this Subcontract Agreement without advance notice to Subcontractor.
- E. In the event of Contractor exercising any of its remedies under the preceding Subparagraph (C), Subcontractor shall not be entitled to receive any further payment until the applicable Subcontract Work is finished. If the unpaid balance of the Subcontract Price exceeds the expense of finishing such Subcontract Work, inclusive of compensation for additional managerial and administrative services and other costs and damages as Contractor may suffer as a result of the default (including, without limitation, in overcoming any delay associated with such default), then such excess amount shall be paid to the extent of the Subcontract Work performed by Subcontractor in accordance with the Contract Documents, subject to the other terms and conditions of the Contract Documents. If the expense, compensation, costs and damages described in the preceding sentence exceed such unpaid balance of the Subcontract Price as specified in the applicable Purchase Order, Subcontractor and its sureties, if any, shall be liable for and shall pay the difference to Contractor promptly on demand. Failure of Contractor to exercise any of the rights given it under this Section 14 shall not excuse Subcontractor from compliance with the provisions of the Contract Documents, nor prejudice any rights of Contractor to recover damages for such default. In addition to the foregoing, Contractor may exercise its remedies under the preceding Subparagraph (C) with respect to any Purchase Order or this Subcontract Agreement for the same reasons or circumstances, and in accordance with the same rules and procedures as Owner may exercise such remedies pursuant to the terms of the Prime Contract.
- F. The foregoing rights and remedies shall be in addition to all other rights and remedies available to Contractor under the Contract Documents and/or at law or in equity with respect to the particular default, such rights and remedies being cumulative and not exclusive.
- G. If Contractor wrongfully terminates this Subcontract Agreement, any Purchase Order or any portion of the Subcontract Work, such termination shall be converted to a Termination for Convenience under Section 15 below and Subcontractor shall be paid in accordance with Section 15 hereof and Contractor shall have no further liability or obligation to Subcontractor. If Contractor wrongfully suspends any Subcontract Work under this Section 14, such suspension shall be converted to a suspension for convenience under Section 13 above with any compensation that may be due Subcontractor in connection with such suspension being determined

in accordance with Section 13 hereof and Contractor having no further liability or obligation to Subcontractor.

15 - Termination for Convenience

- A. Should the Owner terminate the Prime Contract or any part thereof that includes the Subcontract Work, Contractor shall have the right to terminate this Subcontract Agreement or any Purchase Order by giving notice to Subcontractor. Contractor's liability to Subcontractor under such termination by Owner shall be limited solely to the extent of Contractor's recovery from Owner on Subcontractor's behalf subject to Contractor's rights and remedies under Section 14.
- B. Contractor may terminate this Subcontract Agreement or any Purchase Order or any portion of the Subcontract Work without cause and/or for its own convenience by giving notice to Subcontractor. Contractor shall reimburse Subcontractor for all reasonable and direct costs it will have actually incurred to perform the Subcontract Work in accordance with the terms of this Subcontract Agreement or any Purchase Order to the date of termination to the extent applicable to the terminated Purchase Order or Subcontract Work, including any irrevocable contract commitments and costs arising directly out of demobilization and return of Subcontractor's equipment to the extent Contractor accepts such costs as reasonable. In no event shall Subcontractor be entitled to any reimbursement for any Subcontract Work or other work not performed or for loss of any anticipated profits as a result of such termination, nor shall any such reimbursement exceed, in the aggregate with all other amounts paid with respect to the terminated Subcontract Work, the total Subcontract Price applicable to such terminated Subcontract Work.
- C. The compensation described in this Section 15 shall be Subcontractor's sole and exclusive compensation and remedy if this Subcontract Agreement, any Purchase Order or any portion of the Subcontract Work is terminated for any reason under this Section 15.

16 - Subcontractor's Duties Under Termination

- A. After receiving any notice of termination, (whether of this Subcontract Agreement, any Purchase Order issued hereunder or any portion of the Subcontract Work), whether for cause, default or convenience, Subcontractor shall: (a) stop the Subcontract Work on the date and to the extent specified in the termination notice, and (b) place no further orders or subcontracts except as may be necessary for completing such portions of the Subcontract Work that have not been terminated, and (c) terminate all orders and subcontracts to the extent that they relate to the portions of the Subcontract Work terminated, and (d) to the extent directed by Contractor, deliver and assign to Contractor (or, as designated by Contractor, to the Owner), which Contractor may at its discretion assume, any and all contracts, subcontracts, purchase orders, and options made by Subcontractor in performance of or related to the Subcontract Work. Subcontractor shall deliver to Contractor true and correct originals thereof and all copies of the Contract Documents for the Subcontract Work in Subcontractor's possession (except that Subcontractor may retain photocopies of all relevant documents for its own files) and all other contracts, agreements and materials relating to governmental permits, orders placed, bills, invoices and lien waivers or otherwise related to the terminated Subcontract Work, and (e) take all such action as may be necessary or as directed by Contractor to protect and preserve all of the Subcontract Work completed or started prior to such notice. Should such termination only apply to a portion of the Subcontract Work, Subcontractor shall proceed to complete all portions of the Subcontract Work not terminated in accordance with the applicable Contract Documents.
- B. Subcontractor is responsible for providing sufficient documentation of any and all costs, expenses and other amounts claimed as a result of any termination, all of which shall be provided to Contractor in writing within thirty (30) days of Subcontractor's receipt of the applicable notice of termination or in accordance with the timeframes set forth in the Prime Contract, if such timeframes are shorter, or Subcontractor's right to receive such costs, expenses and other amounts associated with such termination shall be deemed waived. Further, notwithstanding the foregoing or anything herein to the contrary, in no event shall Subcontractor be entitled to compensation with respect to any termination by Owner if Subcontractor has not timely furnished the above described notifications and information within the timeframes required for Contractor to timely submit corresponding notifications and information to Owner under the Prime Contract. Subcontractor shall cooperate with Contractor in the prosecution of any claim arising out of an Owner termination.

17 - Waiver of Consequential Damages

Except for liquidated or delay damages as provided for in the Contract Documents or as specified in a Purchase Order and excluding all damages and other amounts for which Subcontractor has liability under Section 18(B) hereof which arise out of personal injury, bodily injury, death or property damage sustained by any third party and/or under Section 18(C) hereof and all damages and other amounts for which Subcontractor has liability under Section 28 hereof and notwithstanding any other provision of this Subcontract Agreement to the contrary, neither party shall be liable to the other party for any special, indirect, incidental, punitive, or consequential damages or for loss of profits or revenue, or cost of capital, whether based on contract, warranty, tort (including, without limitation, negligence of any nature), strict liability or otherwise. The provisions of this Section 17 shall not apply to any consequential damages or any other losses for which Contractor becomes liable to Owner under the Prime Contract as a result of any acts or omissions of Subcontractor or anyone directly or indirectly employed by Subcontractor or any failure or breach by Subcontractor.

18 - Indemnification

A. In consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the amount of which is included in the Subcontract Price, Subcontractor agrees to the following indemnification obligations to the fullest extent permitted by law.

B. Subcontractor shall defend, indemnify, save and hold harmless, Contractor, Owner, architect, engineer and all their respective affiliates, parents, subsidiaries, divisions, directors, officers, agents, shareholders, heirs, assigns, successors in interest, representatives and employees (collectively, "Indemnitees"), from and against any and all lawsuits, administrative proceedings, claims, liabilities, demands, damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, court costs, awards, fines, penalties and judgments, in law or in equity, of every kind and nature whatsoever (collectively or individually, "Claims"), arising by reason of:

1. personal injury, the death of or bodily injury to persons (including, without limitation, employees of Subcontractor);
2. design defects (to the extent design is furnished as part of the Subcontract Work), defective or nonconforming materials or equipment (to the extent materials or equipment are furnished as part of the Subcontract Work) or Subcontract Work,
3. damages or destruction of property, or
4. the violation of any federal, state or local ordinances, codes, statutes, acts, regulations and laws

arising out of or alleged to have arisen out of in whole or in part from, or in any way connected with Subcontractor's performance under this Subcontract Agreement or any Contract Document, or any act or omission of Subcontractor, its sub-subcontractors, vendors or suppliers of any tier or anyone for whose acts any of them may be liable.

C. Subcontractor shall defend, indemnify, and hold harmless Indemnitees from and against any and all Claims arising out of any actual or alleged infringement or improper use of any patent, trade secret, proprietary right, copyright or other intellectual property right in connection with or applicable to the Subcontract Work. If any such Claims should be made, Subcontractor, at its sole cost and expense, shall timely procure the right to continue its performance of the Subcontract Work in accordance with the Contract Documents. Further, if the Indemnitees should be enjoined from the use of any materials, equipment, processes or works covered by this Subcontract Agreement, then Subcontractor shall promptly either: (1) secure a termination of the injunction and procure the applicable Indemnitees' right to use such materials, equipment, processes or works, without obligation or liability, or (2) replace such materials, equipment, processes or works, or modify the same so that they become non-infringing, in accordance with the Contract Documents, all at Subcontractor's sole cost and expense. Notwithstanding the foregoing, Subcontractor shall have no obligation or liability under this Section 18(C) if the applicable Claim arises solely out of Subcontractor's furnishing the Subcontract Work in conformity with the design specifically required by Contractor or Owner under the Contract Documents.

D. Except as otherwise expressly provided in the Contract Documents, Subcontractor shall supply all materials, tools, equipment, appliances and facilities necessary for the proper provision of the Subcontract Work. If Subcontractor or any of its sub-subcontractors of any tier or anyone for whose acts any of them may be liable, by rental, loan or otherwise, uses Contractor's or Owner's materials, tools, equipment,

appliances or facilities, whether or not such is owned, rented leased, or borrowed by Contractor or Owner, Subcontractor agrees to accept such materials, tools, equipment, appliances and facilities in their "as is, where is and with all faults" condition and further agrees that such use shall be at the sole risk of Subcontractor. Further, if Contractor or Owner provides any materials, tools, equipment, appliances or facilities or any transportation, labor, electric power or other utility service or any other assistance in connection with provision of the Subcontract Work, unless otherwise expressly stated to the contrary in the Contract Documents, the provision thereof will be without obligation to do so and Subcontractor waives, releases and renounces all related claims, damages or losses (and shall cause its sub-subcontractors to do the same), whether for personal injury, occupational sickness, disease, death, physical damage, loss of use and whether based on negligence, strict liability or other fault of Contractor or Owner. All such materials, tools, equipment, appliances and facilities shall be returned to Contractor or, as applicable, Owner in the same condition originally received by Subcontractor, ordinary wear and tear excepted. Subcontractor shall defend, indemnify and hold harmless Indemnitees from and against any and all Claims of every nature and kind arising out of the condition or use of any such materials, tools, equipment, appliances and facilities.

- E. Subcontractor agrees to defend, indemnify, and hold harmless Indemnitees from any and all Claims for any and all actual or alleged contamination, pollution, or public or private nuisance, arising out of or in any manner related to, based upon, or in connection with, any operations, performance, breach, course or scope of work, act, omission, or the presence upon, use, or other encountering of any property, facilities, personnel, vehicles, materials, equipment, or operations of Contractor, Owner or others by or involving Subcontractor or any of its sub-subcontractors, vendors or suppliers of any tier or anyone for whose acts any of them may be liable in connection with the Subcontract Work.
- F. To the fullest extent permitted by law, Subcontractor expressly waives the benefit of any applicable workers compensation laws or provisions which limit its tort or other liability towards the Indemnitees on account of injuries to Subcontractor's employees and Subcontractor agrees to assume all such liability. With respect to the State of Ohio, this waiver applies to Section 35, Article II of the Ohio Constitution, and to Ohio Revised Code Section 4123.74.
- G. In any and all Claims against the Indemnitees by any employee of Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts it may be liable, the indemnification obligations under this Section 18 shall not be limited in any way (and with respect to the State of Ohio, notwithstanding Section 35, Article II of the Ohio Constitution and Ohio Revised Code Section 4123.74 to the contrary) by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under any workmen's compensation acts, disability benefit acts or other employee benefit acts.
- H. In any jurisdiction in which a provision requiring Subcontractor to indemnify the Indemnitees against the consequences of Indemnitees' negligence would be void or unenforceable, the foregoing indemnification provisions shall be deemed to apply only to the extent such matters exclude Indemnitees' negligence.
- I. The provisions of this Section 18 shall survive termination of this Subcontract Agreement or any Purchase Order.
- J. The provisions of this Section 18 shall take precedence over any and all past or future agreements, either written or verbal, including but not limited to any rental agreements, inspection sheets, work orders, equipment time sheets, or operator time sheets that may be issued by Subcontractor. The rights and obligations under this Section 18 shall be in addition to and not in lieu of any similar rights and obligations under the Contract Documents. The provisions of this Section 18 may only be changed or amended only by a written agreement signed by Subcontractor and the Chief Executive Officer of Contractor.

19 - Insurance

- A. Subcontractor shall procure and maintain, and shall require each of its sub-subcontractors (regardless of tier) to procure and maintain, in effect during the performance of any Subcontract Work or any other work under this Subcontract Agreement and the term of all applicable warranty periods and, if longer, the coverage period required under the Prime Contract, the following minimum insurance coverages with carriers satisfactory to Contractor:

- 1. **Workers Compensation Insurance**, with statutory limits as required by the state in which the Subcontract Work is to be performed. Jones Act and/or United States Longshoreman &

Harbor Workers Act coverage shall be provided where applicable.

Employer's liability insurance shall be provided with limits of not less than:

- \$500,000 each accident for bodily injury by accident
- \$500,000 policy limit for each bodily injury by disease
- \$500,000 each employee for bodily injury by disease

If Subcontractor is performing Subcontract Work on a project in the State of Ohio, coverage shall also be provided for Employers' Liability Coverage (stop gap), including "substantially certain to occur" claims with limits of not less than:

- \$500,000 each accident for bodily injury by accident
- \$500,000 policy limit for each bodily injury by disease
- \$500,000 each employee for bodily injury by disease

2. **Comprehensive General Liability or Commercial General Liability insurance**, utilizing ISO (Insurance Services Organization) Form CG 0001 (current edition) or its equivalent, covering all operations by or on behalf of Subcontractor, providing insurance for bodily injury liability and property damage liability for the limits of liability and including coverage for independent contractors, premises and operations, products and completed operations, contractual liability insuring the obligations assumed by Subcontractor in this Subcontract Agreement and all applicable Contract Documents, broad form property damage (including completed operations), explosion, collapse and underground hazards, and personal injury liability.

Limits of Coverage should be provided in amounts not less than:

- \$1,000,000 per occurrence
- \$2,000,000 products and completed operations aggregate
- \$2,000,000 general aggregate (**on a per project basis**)
- \$1,000,000 personal and advertising injury

General Liability coverage shall not include any exclusion for damage to work performed by Subcontractor (i.e. ISO exclusion endorsement CG2294 or its equivalent).

Completed Operations coverage will be maintained for not less than two (2) years from the date of Final Completion of the Subcontract Work or any longer period required by the Prime Contract.

3. **Comprehensive automobile liability insurance**, with limits of not less than one million dollars \$1,000,000 combined single limit for bodily injury and property damage shall be maintained to protect Subcontractor and the additional insureds against all claims for injuries and damage to property arising from the use of motor vehicle(s) and shall cover operations on and off the Site, whether they are owned, non-owned, rented, leased or hired.
4. **Professional Liability Insurance**, (if the Subcontract Work involves or includes the Subcontractor providing or performing design, engineering, consulting, or any professional service) with a combined single limit of not less than five hundred thousand dollars (\$500,000.00) per occurrence, including extended reporting period coverage for not less than two (2) years from the date of Final Completion of the Subcontract Work or any longer period required by the Prime Contract.
5. **Contractor's Pollution Liability Insurance** (if the Subcontract Work involves or includes Subcontractor handling, transporting, disposing, or performing work or operations with hazardous substances, contaminants, waste, toxic materials, or any potential pollutants) with a combined single limit of not less than one million dollars (\$1,000,000.00) per occurrence, including extended reporting period coverage for not less than two (2) years from the date of Final Completion of the Subcontract Work or any longer period required by

the Prime Contract.

6. **Excess or Umbrella Liability Insurance**, with a combined single limit of not less than five million dollars (\$5,000,000.00) per project or location aggregate. Coverage shall apply over the primary General Liability, Automobile Liability and Employers' Liability coverage as required above.
 7. **Builder's Risk/ Installation Coverage** for the Subcontract Work and building materials stored at the construction site or at any other locations until those materials are permanently incorporated into the property at the Site and accepted by Contractor and Owner.
 8. **Contractor's Equipment & Tool Coverage** for Subcontractor's tools and equipment including scaffolding and false work. Whether or not Subcontractor maintains equipment and tool coverage, Contractor shall not be liable for any damage or loss of any contractor equipment or tools of any cause or nature, unless directly caused by Contractor.
- B. All liability insurance policies shall name Contractor, Owner and Owner's engineer (if any) as an additional insured. The General Liability policy shall name Contractor, Owner and Owner's engineer (if any) as an additional insured on a primary basis for ongoing and completed work utilizing ISO form(s) CG 2010 and CG2037 (current edition) or their equivalent.
 - C. It is expressly agreed and understood by Subcontractor that the insurance afforded to the additional insured(s) shall be primary insurance and that any other insurance carried by Contractor, Owner or Owner's engineer (if any) shall be excess of all insurance carried by the Subcontractor and shall not contribute with Subcontractor's insurance.
 - D. Subcontractor shall ensure that all of its sub-subcontractors (of any tier) procure and maintain insurance in the same amounts and types, including the additional insured requirements, as set forth in this Section 19.
 - E. All of the insurance policies required under this Subcontract Agreement shall contain a provision or be endorsed to waive Subcontractor's and its insurance carrier's rights of subrogation against Contractor and any other additional insured listed or required in this Section 19, regardless of the negligence of Contractor or any of the additional insureds.
 - F. All coverage shall be placed with an insurance company that is reasonably acceptable to Contractor and all Subcontractor insurance carriers must maintain an AM Best rating of "A-" or better. The insurance company or companies shall be lawfully authorized to do business in the state where the Subcontract Work is to be performed.
 - G. The above policy limits may be attained through a combination of primary and umbrella or excess layer policy limits.
 - H. Any deductibles or self-insured retention shall be for the sole account of Subcontractor.
 - I. Prior to starting any of the Subcontract Work, Subcontractor shall furnish Contractor with current certificates of insurance executed by its insurance carrier or its authorized agent as evidence that insurance meeting the requirements of this Section 19 are in full force and effect. The foregoing certificates shall be delivered to Contractor electronically by uploading the file at www.copelandelectric.com/subcontractor/ or to such other e-mail address as may be designated by Contractor from time to time. All certificates shall provide that any company issuing such insurance policies shall provide not less than thirty (30) days advance written notice to Contractor of any cancellation, termination, or material change of any policy of insurance. If requested by Contractor, Subcontractor shall also furnish Contractor with copies of the insurance policies and/or endorsements evidencing the coverage required under this Section 19.
 - J. Failure to obtain and maintain the required insurance shall automatically constitute a default by Subcontractor, and Subcontractor shall be liable to Contractor for any and all costs, premiums and rate increases, liabilities, damages, penalties and costs and expenses (including, without limitation, reasonable attorneys' fees and costs, court costs, and settlement expenses) resulting from such default.
 - K. None of the requirements contained herein as to the types or limits of insurance coverage to be

maintained by Subcontractor are intended to and shall not in any manner limit any liabilities or obligations of Subcontractor. Contractor's approval or failure to approve any insurance coverage provided by Subcontractor shall not relieve Subcontractor of its obligations herein and shall not reduce or limit the liabilities or obligations of Subcontractor.

- L. Should the Owner require additional coverage or higher policy limits, Subcontractor shall be required to meet those additional insurance requirements.

20 - Title and Risk of Loss

- A. Title to any materials supplied by Subcontractor related to the Subcontract Work and any portion thereof, shall pass to Contractor or Owner, as the case may be, at the time of payment or delivery, whichever is earlier. At any time after transfer of title to Contractor or Owner, Subcontractor shall, upon written request, execute and deliver to Contractor (or if required by Contractor, to Owner) a bill of sale or other sufficient conveyance, assignment or transfer, vesting Contractor or Owner with free, clear and marketable title to the Subcontract Work.
- B. Regardless of the passage of title, Subcontractor shall be responsible for, and shall bear all risk of loss or damage to the Subcontract Work and all materials, appliances, supplies and equipment applicable thereto until Final Completion of the Subcontract Work, regardless of cause or fault, unless such loss or damage results from the direct and sole negligence of Contractor. Subcontractor agrees to pay for any and all damage that may be caused to any other work or the work of others caused by Subcontractor or its sub-subcontractors, suppliers or vendors of any tier or anyone for whom any of them may be liable at any time. If any of the Subcontract Work is damaged or lost due to the fault or negligence of Subcontractor or its sub-subcontractors, suppliers or vendors of any tier or anyone for whom any of them may be liable, Subcontractor shall repair or replace such portion of the Subcontract Work at its own expense.

21 - Dispute Resolution

- A. Contractor and Subcontractor shall endeavor to settle any dispute that arises out of or relates to this Subcontract Agreement, first through direct discussions by their respective Authorized Representatives at the Site. If such dispute cannot be resolved by the Authorized Representatives within fifteen (15) days, then either party may give written notice to the other party requesting that the dispute be escalated to the next level of discussions. Within fifteen (15) days after the receipt of such notice, the parties shall attempt to resolve the dispute by direct discussions of their respective corporate officers. If the corporate officers are unable to resolve the dispute within thirty (30) days after the receipt of such notice, or within a time period otherwise agreed to by the parties in writing, the parties agree to proceed to mediation. All negotiations pursuant to this Subparagraph (A) are considered to be confidential and shall be treated only as compromise and settlement negotiations for purposes of federal and state rules of evidence.
- B. Mediation shall take place with a mutually agreed upon mediator. The mediation shall take place at Contractor's place of business unless otherwise agreed to by the parties. Each party will pay an equal share of the cost of the mediator and mediation facilities. If after commencement of mediation, either party determines at any time that the dispute cannot be resolved by mediation, that party may withdraw from mediation. If the mediation process has not resolved the dispute within thirty (30) days of the submission of the matter to mediation, or a longer period if agreed to by the parties, the mediation process shall be stopped.
- C. If the dispute has not been resolved through the mediation process, the dispute may, if the parties agree, be submitted to arbitration in accordance with the American Arbitration Association, Construction Industry Arbitration Rules then applicable, or a mutually agreed upon set of arbitration rules. Any agreement to arbitrate, and any other agreement or consent to arbitrate entered into in accordance herewith, will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction. Notice of a request for arbitration must be filed in writing with the other party and accepted in writing by such other party. The request for arbitration must be made within a reasonable time after the mediation process has been ceased, but in no event may a request for arbitration be made after an applicable statute of limitations would bar any legal or equitable proceedings or actions based on such dispute. Any arbitration award shall be specifically enforceable in any court of competent jurisdiction. Unless agreed upon otherwise by the parties, arbitration shall be initiated and conducted in Cincinnati, Ohio. In reaching a final decision, the arbitrator(s) must render findings of fact and conclusions of law, upon which the

decision must be based. Decisions shall be made only by of a majority of the arbitrators, if more than one. All decisions shall be final and binding on the parties and may be entered in any court of competent jurisdiction, except that appeals based on errors of law, lack of evidence, sufficiency of evidence, or any other grounds provided by statute may be made to a federal district court of competent jurisdiction nearest the site of the arbitration. The decision must be rendered in writing and may include an award of attorney' fees and costs as the arbitrator(s) will deem reasonable. The arbitrator(s) shall not grant any punitive damages or any relief prohibited by or inconsistent with this Subcontract Agreement.

- D. In the event that the dispute is not to be resolved through arbitration, then either party shall be free to bring legal action for resolution of the dispute, consistent with the provisions of Section 30 below; provided, however, that the parties agree that such legal action shall be tried and heard before a judge sitting without a jury, it being agreed that each of Contractor and Subcontractor, with full understanding and advice of counsel, waives its right to a jury in any such proceeding.
- E. Subcontractor shall continue the performance of the Subcontract Work, without interruption during the pendency of any dispute; provided however, that the provisions of this Section 21 shall not limit or restrict the effectiveness of Contractor's orders suspending or terminating Subcontractor's performance under this Subcontract Agreement or any other order given by Contractor pursuant to Section 14 hereof. Subcontractor further agrees that it can be fully compensated by money damages for any breach of this Subcontract Agreement or any Contract Document which may be committed by Contractor, and Subcontractor agrees that no default, breach, act or omission of Contractor under this Subcontract Agreement or any Contract Document shall entitle Subcontractor to terminate or rescind this Subcontract Agreement or any Purchase Order or to suspend, delay, stop or abandon performance of any Subcontract Work. Subcontractor further waives any and all rights and remedies to which it might otherwise be entitled because of any default, breach, act or omission of Contractor, saving only Subcontractor's right to money damages, subject to Section 17 hereof.
- F. Notwithstanding anything herein to the contrary, if in the opinion of Contractor, Subcontractor is or may be liable for claims asserted by or against a third party with respect to the Subcontract Work or Subcontractor has claims under this Subcontract Agreement or otherwise with respect to any Subcontract Work which arise in whole or part out of or are otherwise related to claims which Contractor has against Owner under the Prime Contract, then, at the election of Contractor, Subcontractor consents to being joined by Contractor in any dispute proceeding applicable thereto, including, without limitation, any arbitration proceeding, involving Contractor and, as applicable, such third party or Owner. The final adjudication rendered in any such proceeding in which Subcontractor is joined shall be binding upon Subcontractor.
- G. All offers, promises, communications, statements and actions during the course of any informal dispute resolution process, and any mediation or arbitration, by any party or individual:
 - (a) are confidential, privileged and may not be disclosed (including by any mediator);
 - (b) are inadmissible, are not discoverable and may not be used (or referred to) for any purpose, including impeachment of any other testimony in an arbitration, judicial, administrative or regulatory proceeding; and
 - (c) stay all statutory or contractual limitations that limit a Party's right to litigate.

Notwithstanding the above, either party hereto may bring legal action consistent with Section 30 to obtain equitable relief at any time.

22 - Taxes Included in Contract Price

Unless otherwise expressly stated in any Purchase Order, the Subcontract Price specified in any Purchase Order includes all applicable federal, state, and local taxes, including any sales, use and excise taxes, in effect on the date the Purchase Order is issued. Subcontractor shall be solely liable for any and all taxes and contributions for unemployment insurance, worker's compensation insurance, old age retirement benefits, life pensions, annuities and similar benefits, which may now or hereafter be imposed by law or collective bargaining agreements with respect to persons employed (directly or indirectly) by Subcontractor to perform the Subcontract Work. Subcontractor shall also pay all taxes associated with equipment rentals and consumables.

Notwithstanding anything in the Subcontract Agreement or any Contract Documents to the contrary, the Subcontract Price is firm and not subject to escalation for any reason unless expressly authorized by Contractor in writing. For the avoidance of doubt, the Subcontract Price includes, without limitation, all applicable federal, state and local taxes and all import charges in effect or otherwise assessed as of the date of issuance of the Purchase Order or at any time prior to Final Completion of the Subcontract Work. Further, the Subcontract Price shall not be subject to escalation or surcharges based on any changes (whether foreseeable or unforeseeable) in market volatility or material availability of any materials or equipment or any other components of the Subcontract Work in response to or resulting from imposition of any such taxes or import charges. The term "import charges" as referred to above is given its customary meaning, applies whether paid or absorbed by Subcontractor directly or indirectly and includes, without limitation, value added taxes, duties, tariffs and excise taxes and any other cost assessed by a government authority in connection with the importation of goods, third party brokerage fees, penalties and classification charges (under the Harmonized System classification code), charges for export compliance screening and verification and the assignment of Export Control Classification Number (for the U.S), and charges related to the management of variances between the quoted import charges and actual costs; provided that if any governmental customs or tax officials impose any surcharges, fines, penalties or other charges on any materials or equipment or any other components of the Subcontract Work, including after Final Completion thereof, the Subcontract Price stated in this Agreement shall also include such surcharges, fines, penalties and other charges. Further, to the extent the Subcontract Price includes surcharges for the imposition of any taxes, tariffs, duties or similar charges which are not ultimately paid by or due from Subcontractor (as to such taxes, tariffs, duties or similar charges, "Unpaid Surcharges"), Subcontractor shall deduct such Unpaid Surcharges from the Subcontract Price or, if the Subcontract Price has already been paid by Contractor, refund such Unpaid Surcharges to Contractor.

23 - Independent Contractor

Subcontractor and each of its sub-subcontractors shall at all times remain independent contractors and not agents, partners, joint venturers, or employees of Contractor. Although Subcontractor may receive general instructions or direction from Contractor concerning the Subcontract Work, Subcontractor's performance of the Subcontract Work shall remain under Subcontractor's exclusive charge and control and Subcontractor shall be solely responsible for the means and methods of its work, including, without limitation, the safety of its operations and its employees. Subcontractor shall be solely responsible for the hire, retention, supervision, termination, wages, withholdings, benefits, insurance, and workers compensation for all of its employees working under this Subcontract Agreement or any Purchase Order and shall promptly pay all amounts, taxes and charges due in connection therewith. Subcontractor agrees to indemnify, defend and hold harmless Indemnitees and reimburse them for any and all expenses and liabilities incurred as a result of Subcontractor's breach of this Section 23. Nothing in this Subcontract Agreement or any Contract Document shall be construed or interpreted to mean that Contractor is a co-employer or joint employer with Subcontractor or any of its sub-subcontractors (regardless of tier).

24 - Authorized Representative

Prior to starting the Subcontract Work and when required by Contractor, Subcontractor shall designate and provide Contractor with the name of a full-time on Site field representative ("Subcontractor's Authorized Representative") who shall be assigned to the Site and who shall be in charge of and responsible for the Subcontract Work. Subcontractor's Authorized Representative shall be competent, fully acquainted with the Subcontract Work, have full authority to receive notices and instructions on Subcontractor's behalf, approve any changes in the Subcontract Work, and otherwise act on behalf of and bind Subcontractor. Subcontractor may not change the Subcontractor's Authorized Representative without the prior written consent of the Contractor. Contractor shall designate a representative who shall be assigned to the Project ("Contractor's Authorized Representative") (as to either Subcontractor's Authorized Representative or Contractor's Authorized Representative, an "Authorized Representative"). Subcontractor shall take direction from Contractor's Authorized Representative and shall communicate with such representative on all matters related to the Subcontract Work.

25 - Labor and Supervision

A. Subcontractor shall employ and maintain a work force of experienced, competent and properly trained employees, along with the proper equipment and tools necessary to complete the Subcontract Work in accordance with the Contract Documents. Subcontractor shall provide an adequate number of qualified and competent administrative and/or supervisory staff and shall and have on the Site, a competent superintendent or project manager, satisfactory to Contractor, who is responsible for the direction of the Subcontract Work and to enforce discipline and order among its employees.

B. Any of Subcontractor's assigned personnel or sub-subcontractors whom the Contractor or Owner may

consider to be incompetent, careless, insubordinate or otherwise objectionable, or whose conduct or presence is considered to be detrimental to the best interests of the Subcontract Work or otherwise, or who are not required for the Subcontract Work shall be removed at Contractor's or Owner's request. Contractor or Owner shall bear no liability, responsibility or obligation whatsoever in regard to exercising its rights herein either to Subcontractor or any other person.

- C. Subcontractor shall in all respects comply with and shall cooperate with the Contractor, Owner and other subcontractors in enforcing the Site procedures, conditions and rules established by the Contractor or Owner which affect the Subcontract Work, or the Site, including but not limited to the Schedule or other related Project schedules, access, security, traffic, solicitation, work and storage areas, utilities, safety, medical and first aid facilities, fire and explosion precautions, pollution, sanitation, cleanup and work conditions. Subcontractor shall be required to attend all Site or Project meetings held by the Contractor or Owner in regard to the Subcontract Work or the Project for which the Subcontract Work is being performed.
- D. If any part of the Subcontract Work depends on proper execution or results in relation to the work of any other contractor, subcontractor or supplier, Subcontractor shall, through reasonable due diligence, inspect the work of said other party and promptly report to Contractor any defects in such work or the performance thereof that adversely affects the Subcontract Work. Subcontractor's failure to inspect and/or report any discovered defects (or defects that could have been discovered had such inspection been performed) shall constitute an acceptance of said other party's work as fit and properly performed and preclude Subcontractor from submitting a claim for damages, time extension, Subcontract Price adjustment or any Change Order based on such defective work.

26 - Warranties / Callback Period

- A. Subcontractor warrants to Contractor that all equipment, materials and other goods furnished as part of the Subcontract Work (a) will be of new manufacture (unless specifically noted otherwise in the Contract Documents), and (b) will be free from defects in design, workmanship, and materials, and (c) will be suitable for their respective intended purpose as specified in the Contract Documents, and (d) will be fit for the particular purpose for which they are respectively intended, to the extent such purpose is set forth in the Contract Documents or Subcontractor should reasonably know of such purpose, and (e) will be in compliance, and will have been manufactured and sold in accordance, with all applicable ordinances, codes, statutes, acts, regulations and laws, (f) will have been fully tested pursuant to and will otherwise be in strict compliance with all of the requirements of the Contract Documents, and (g) will conform with all other warranties applicable to the Subcontract Work that are required under the Contract Documents. Subcontractor further warrants that all equipment, materials and other goods will comply with Plans and Drawings and the Specifications that are part of the Contract Documents and will comply with all performance requirements (including, without limitation, all guarantees), tolerances, and representations contained in the Contract Documents and applicable to the Subcontract Work.
- B. Subcontractor warrants to Contractor that all services provided under the Contract Documents; (a) will strictly comply with the Contract Documents, (b) will be performed in compliance with all applicable ordinances, codes, statutes, acts, regulations and laws, and (c) be properly performed in accordance with the highest degree of skill and care for the applicable industry standards and practices then prevailing at the time the respective Purchase Order is issued, or, if higher, at the time such services are performed. If industry standards and practices conflict with Contractor's requirements, Subcontractor shall notify Contractor's Authorized Representative who will determine and memorialize in writing which requirements shall apply.
- C. If any equipment, materials, goods or services do not comply with any one or more of the foregoing warranties, or becomes noncompliant or defective within a period of one (1) year, or such longer period as specified in the Contract Documents, after Final Completion of the Subcontract Work (excluding any period the equipment, materials or goods are not available for use or operation because of breach or non-conformity with any of said warranties), then Subcontractor shall, at its sole cost and expense, promptly correct, by repair, replacement or re-performance, all defective or non-conforming equipment, materials, goods and services. The decision whether to repair, replace or re-perform shall be made solely by Contractor and such repair, replacement or re-performance shall be scheduled consistent with Contractor's or Owner's operating and scheduling requirements so as to minimize loss of production or use of the equipment, materials or goods or of any plant or equipment of which the equipment, materials or goods are a part or which are otherwise affected by the applicable defective or nonconforming

equipment, materials, goods or services or associated repair, replacement or re-performance. All costs and expenses associated with access to, repair or replacement of any such equipment, materials or goods or re-performance of such services, including, but not limited to, additional legal or engineering activities, packing, unpacking, examination, salvage, transportation, testing, re-shipping and removal and all other incidental damages relating thereto (including, without limitation, the repair or replacement of any other equipment, materials, goods or work affected thereby and/or the applicable nonconformity) shall be paid by Subcontractor. The warranty period for any repaired, replaced or re-performed equipment, materials, goods or services shall be extended to one year from the date of Final Completion of the repaired, replaced or re-performed equipment, materials, goods or services or for the duration of the unused original warranty period, if such period is longer, or such longer period of time as may be required by the Prime Contract.

- D. Contractor's inspection, testing, acceptance, payment, or use of any of the Subcontract Work shall not constitute a waiver by it of any warranties and shall not affect the warranties and obligations of Subcontractor under the Contract Documents.
- E. In the event of Subcontractor's failure to repair or replace or re-perform any of the Subcontract Work, or to otherwise correct defaults in accordance with any term of this Subcontract Agreement, Contractor, after notice to Subcontractor, may correct any such deficiencies in the Subcontract Work, or may purchase replacement thereof. Contractor may either invoice Subcontractor for the cost of correcting the deficiencies, including, without limitation, the costs directly attributable to other services that are required to be performed in connection with the correction of such deficiencies, additional legal or engineering expense, salvage costs, testing expense and other incidental damages relating thereto, or deduct such costs from any payments due or subsequently due Subcontractor.
- F. If and whenever a latent defect, that is, a defect which exists in the Subcontract Work that was not and would not normally be revealed, discovered, or located before the end of the warranty period by a reasonable inspection becomes apparent, Contractor shall, as promptly as practical, notify Subcontractor and Subcontractor shall promptly correct such defect by re-performing, repairing or replacing the defective portion of the Subcontract Work at its expense and in accordance with the Contract Documents and shall otherwise have all of the same liabilities and responsibilities to Contractor under this Subcontract Agreement with respect to such defect just as though such defect had been discovered before expiration of any warranty period.
- G. Subcontractor shall exercise all reasonable efforts to obtain warranties at least as long as the warranty periods applicable to Subcontractor's warrantees under this Subcontract Agreement against defects in design, materials and workmanship from every manufacturer or supplier furnishing materials, equipment or other goods for the Subcontract Work. All such manufacturer or supplier warranties, including those which extend beyond Subcontractor's warranty period, shall be assigned to Contractor or Owner as designated by Contractor. Subcontractor shall allow Contractor or Owner to make any claim under and shall assign to Contractor or Owner at Contractor's request, any such warranties. The existence and terms of, or Contractor's exercise of any rights under, any manufacturer or supplier warranty shall in no way limit the Subcontractor's warranty obligations under the Contract Documents.
- H. Subcontractor agrees that Owner may enforce any warranties applicable to the Subcontract Work under the Contract Documents directly against Subcontractor.
- I. To the extent there is any conflict between the warranties set forth in this Subcontract Agreement and any warranties required under the Prime Contract that are applicable to the Subcontract Work, the warranties requiring the higher standard of quality or performance for the Subcontract Work shall govern.

27 - Entire Agreement and Amendments

This Subcontract Agreement, together with the other Contract Documents, constitutes the entire agreement between Contractor and Subcontractor and supersedes all prior agreements, understandings and commitments, whether oral or in writing, relating to the subject matter thereof. This Subcontract Agreement and any Purchase Order issued hereunder may not be amended or modified in any manner except by a written document signed by both parties that expressly amends the same. Any captions used herein and in the other Contract Documents are for the convenience of the parties and shall not be used in construing the meaning of any sections, provisions, terms or conditions. The amendment provisions of this Section 27 shall be subject to the provisions of Section 18 of this Subcontract Agreement, which pursuant to Section 18(J) thereof requires the signature of the Chief Executive Officer of Contractor in order for any changes to said Section 18 to be valid and enforceable.

- A. To the extent the Prime Contract or any other agreement between Contractor and Owner provides for the confidentiality of any of Owner's proprietary or confidential information in connection with the performance of the Subcontract Work, such information shall be deemed "Confidential Information", and Subcontractor shall be equally bound to the Owner's confidentiality requirements with respect thereto. Subcontractor shall also bind all of its sub-subcontractors, employees and agents to all such confidentiality requirements.
- B. For the purposes of this Subcontract Agreement, "Confidential Information" shall also include all of Contractor's and Owner's data, documents, drawings, schematics, plans, pricing information and other material and information, whether delivered orally or in writing, and whether or not marked as such.
- C. During the term of this Subcontract Agreement, and thereafter, except as Contractor may authorize in writing, Subcontractor shall and shall cause its agents, employees and sub-subcontractors to: (a) treat and cause to be treated as confidential all Confidential Information, and (b) not disclose any Confidential Information to any third party or make available any reports, recommendations, or conclusions based on the Confidential Information to any third party without Contractor's prior written approval, and (c) reveal the Confidential Information only to those employees of Subcontractor who require such access in order to perform the Subcontract Work, and (d) if requested by Contractor, grant access to Confidential Information only to employees of Subcontractor or its sub-subcontractors who have signed a confidentiality agreement acceptable to Contractor, and (e) use Confidential Information only in connection with performing the Subcontract Work pursuant to the Contract Documents, and (f) make copies of any tangible embodiment of Confidential Information only as necessary for performing the Subcontract Work, and (g) remove any tangible embodiment of Confidential Information from the Site only with the express permission of Contractor; and (h) return any or all Confidential Information or any tangible representations of Confidential Information to Contractor promptly following the request of Contractor and, in any event, upon completion of performing the Subcontract Work pursuant to the Contract Documents. Subcontractor may disclose all such information to such regulatory and other governmental bodies as required by law; however, Subcontractor shall notify Contractor's Authorized Representative immediately upon such request and in advance of such disclosure and provide Contractor and Owner adequate time to object to the release of such Confidential Information.
- D. Subcontractor acknowledges that the breach of any of the covenants contained in this Section 28 will result in irreparable harm and continuing damages to Contractor and Contractor's business, and that Contractor's remedy at law for any such breach or threatened breach would be inadequate. Accordingly, in addition to such remedies as may be available to Contractor at law or in equity, in the event of any such breach, any court of competent jurisdiction may issue an injunction (both preliminary and permanent), without bond, enjoining and restricting the breach or threatened breach of any such covenant, including, but not limited to, an injunction restraining Subcontractor, its sub-subcontractors, agents and employees from disclosing, in whole or in part, any Confidential Information. Subcontractor shall pay all of Contractor's costs and expenses, including, without limitation, reasonable attorneys' fees and costs and accountants' fees and costs, incurred in enforcing such covenants.
- E. Any and all products of the Subcontract Work performed by Subcontractor and any of its sub-subcontractors or employees, including but not limited to, all inventions, discoveries, formulas, processes, devices, methods, compositions, compilations, outlines, notes, reports, plans, flow charts, source codes and other forms of computer software, algorithms, procedures, policies, data, documentation, and other materials or information which Subcontractor, its sub-subcontractors, agents or employees may conceive, invent, author, create, reduce to practice, construct, compile, develop, or improve in the course of performing the Subcontract Work or otherwise delivered to Contractor as part of the Subcontract Work (collectively, "Work Product") shall be the sole and exclusive property of Contractor from and after the time it is created. Subcontractor agrees and agrees to cause its sub-subcontractors, agents and employees to promptly disclose to Contractor the existence of any and all Work Product of which Contractor would not otherwise be aware upon its creation.
- F. Subcontractor agrees to assign, and hereby does assign, and agrees to cause to be assigned, to Contractor (together with its successors and assigns) the sole and exclusive right, title, and interest in all Work Product, including, without limitation, any and all related patent, copyright, trademark, trade secret, and other property rights of any nature whatsoever. Subcontractor warrants and agrees to execute

and deliver to Contractor, and Subcontractor agrees to cause its sub-subcontractors, employees or agents to execute and deliver to Contractor, any and all documents that Contractor may reasonably request to convey to Contractor any interest Subcontractor, its sub-subcontractors or any of their agents or employees may have in any Work Product or that are otherwise necessary to protect and perfect Contractor's interest in any Work Product. Subcontractor further warrants and agrees to take, and Subcontractor agrees to cause its sub-subcontractors, agents and employees to take, such other actions as Contractor may reasonably request to protect and perfect Contractor's interest in any Work Product. Subcontractor further agrees that the sums paid to Subcontractor by Contractor in connection with the performance of the Subcontract Work serve as full consideration for the foregoing assignment, and that said consideration is fair and reasonable, and was bargained for by Subcontractor. Subcontractor represents and warrants that it has full right, power, and authority to grant the assignment granted under this Subparagraph (F).

- G. In the event that any Work Product contains or requires for its use any items, elements, or components that were developed or otherwise acquired by Subcontractor, its sub-subcontractors, agents and employees prior to the date of this Subcontract Agreement and that are proprietary to Subcontractor ("Retained Product"), Subcontractor shall promptly identify such Retained Product to Contractor in writing. Subcontractor hereby grants, and will cause its subcontractor, agents and employees to grant to Contractor or Owner, as the case may be, an irrevocable, perpetual, non-exclusive, royalty-free, world- wide license to use, reproduce, perform, and execute any and all such Retained Product.
- H. Subcontractor agrees not to use, and agrees to prohibit its sub-subcontractors, agents and employees from using, any Work Product, including any Plans and Drawings, Specifications, reports, or any unique design aspects of the Subcontract Work in any other project or work without the prior written approval of Contractor.
- I. Nothing in this Section 28 shall be construed to prohibit Subcontractor from using its skills, knowledge, and experience that have a general applicability, including such skills, knowledge, or experience gained by Subcontractor in connection with performing the Subcontract Work ("Obtained Knowledge"), in performing work for other clients; provided, however, that the Obtained Knowledge or Subcontractor's use thereof shall not include any Confidential Information.
- J. The obligations under this Section 28 shall survive any termination of this Subcontract Agreement or any Purchase Order.

29 - Publicity

Subcontractor shall not use any information regarding the Subcontract Work, this Subcontract Agreement or any Purchase Order in any publication, advertisement or other promotional activity without the prior written approval of Contractor and Owner. This includes the use of any photographs taken of the Subcontract Work or any aspect of the Project or the Site, whether or not the taking of such photographs has been approved by Contractor or Owner.

30 - Governing Law, Venue and Jurisdiction

Unless otherwise agreed to by the parties, this Subcontract Agreement and any Purchase Order issued hereunder shall be construed and interpreted in accordance with the laws in effect in the State where the Subcontract Work is to be performed or, if the applicable dispute involves or potentially involves the Owner, the governing law specified by the Prime Contract applicable to such Subcontract Work; provided, however, that all judicial proceedings hereunder or pursuant to any Purchase Order shall be brought in courts with jurisdiction over and sitting in Hamilton County, Ohio. Contractor and Subcontractor agree to such venue and submit themselves to the jurisdiction of such courts, hereby waiving any claim about an inconvenient forum or other procedural restrictions or impediments to the jurisdiction of said courts.

31 - Severability

If any provision, or any part thereof, of this Subcontract Agreement or any other Contract Document is found by any court or governmental agency of competent jurisdiction to be invalid, void, illegal or unenforceable for any reason whatsoever, such provision shall be limited or excluded but only to the extent necessary to make it valid, legal and enforceable; provided that to the extent the exclusion of such provision (or part thereof) is necessary to make it legal, valid and enforceable, such provision (or part thereof), shall be replaced with the strictest enforceable

provision in the governing jurisdiction. In any event, the invalidity, illegality or unenforceability of any provision, or any part thereof, shall not affect the remainder of such provision or any other provision hereof or of any Contract Document, all of which shall remain in full force and effect.

32 - Assignment

It is expressly understood and agreed that Subcontractor's responsibilities and obligations under this Subcontract Agreement or any Contract Document are non-delegable. Subcontractor shall not assign or transfer any rights, claims, interests, or obligations under any the Contract Documents including, but not limited to, claims for monies that are due or may become due, without the prior written consent of Contractor in each instance. Except for the provisions of this Subcontract Agreement affording rights or benefits to the Owner or Contractor in reference to Subcontractor's sub-subcontractors, agents or employees and Subcontractor's warranties, books, records and accounts, nothing contained in the Contract Documents shall create any contractual or third-party beneficiary relationship between any parties other than Contractor and Subcontractor. Contractor may assign its rights, claims, interests, and obligations in the Contract Documents to any third party (including, without limitation, to the Owner) upon notice to Subcontractor without the consent of Subcontractor or any other party and without any limitation. In the event of an assignment of the Contract Documents to Owner, Contractor shall automatically be deemed released from all duties and obligations of Contractor arising or accruing on or after the effective date of such assignment.

33 - Right to Audit

Contractor or its designated agents or representations, shall have access to Subcontractor's books, records and accounts at all reasonable times on reasonable notice to the extent necessary to verify the pricing, costs and payment provisions of this Subcontract Agreement or any Purchase Order issued hereunder, or to determine Contractor's rights or Subcontractor's obligations under this Subcontract Agreement or any Contract Documents or to ascertain any facts relative to any claim by or against Subcontractor or Contractor which may become a charge against or which may otherwise relate to any of the Subcontract Work, for a period of three (3) years after final payment. In any event, to the extent the Owner has the right to audit Contractor's books, records and accounts under the Prime Contract, the Owner shall have the same such rights with regard to Subcontractor's books, records and accounts.

34 - Waiver

- A. Contractor's failure to insist or delay its insistence upon strict observance or performance by Subcontractor of any of the terms, conditions or provisions of this Subcontract Agreement, or any Contract Document or Contractor's failure or delay in exercising any of its rights or remedies provided herein, shall not be deemed as a waiver by Contractor of any terms, conditions or provisions, or its rights or remedies hereunder or under any Contract Document. No waiver shall be binding upon the Contractor unless the same is in writing signed by the Contractor and shall then only be for the particular instance referred to in said writing only and shall not act as a waiver of any future instances. The waiver of any one failure breach or right shall not be deemed a waiver of any other failure, breach or right. Payment of any sum by Contractor to Subcontractor with knowledge of any breach or failure shall not be deemed to be a waiver of such breach or failure.
- B. No course of dealing or course of performance between the parties shall act to reduce any of the rights and remedies of Contractor under the Contract Documents or excuse Subcontractor from any of its obligations under this Subcontract Agreement or any Contract Document.
- C. All claims by Subcontractor under any provision of this Subcontract Agreement (including, without limitation, under Sections 11 and Section 12 hereof) or otherwise with respect to this Subcontract Agreement or any Contract Document must demonstrate a direct causal link between the applicable act, omission, circumstance, condition or event, Change, Other Change or Excusable Delay giving rise to the particular claim and the specific cost and, if applicable, delay consequence. Claims based on a total cost, modified total cost or "jury verdict" approach to damages are not permitted and will not justify a Subcontract Price or Schedule adjustment or any other additional compensation or additional time. Verbal notices, Contractor's actual knowledge of events giving rise to a Subcontractor claim or their consequences, alleged notices or claims for additional time or money in any Subcontractor submitted project documents (including, without limitation, time sheets, daily reports or meeting minutes) not submitted in strict compliance with the applicable provisions of the Contract Documents and prior Contractor failures to insist upon Subcontractor's strict compliance with any Contract Document requirement shall not excuse Subcontractor's strict compliance with the requirements of this Subcontract Agreement and all Contract Documents nor entitle

Subcontractor to any additional compensation or additional time.

35 - Notices

Any notice required or permitted to be given by Subcontractor under this Subcontract Agreement or any Contract Document shall not be effective unless it shall have been put in writing and sent via facsimile transmittal with confirmed receipt, registered or certified mail (postage prepaid), or by commercial overnight courier, to Contractor's Authorized Representative at his or her address appearing on the Purchase Order and to the individual designated at the head of this Subcontract Agreement. Subcontractor notice requirements under the Contract Documents dealing with requests for time extensions or additional compensation must be followed exactly and without modification and shall not be deemed satisfied by the submission of routine reports, RFI's, time sheets, daily reports, meeting minutes or the like even if countersigned by Contractor.

36 - Reference to Days

All references to "days" in this Subcontract shall mean calendar days, unless otherwise stated to be business days.

37 - Dealings with Owner

Until Final Completion of the Subcontract Work, Subcontractor agrees that it will not deal directly with, or take direction from Owner or any of its representatives in connection with this Subcontract Agreement or any Purchase Order issued hereunder or the Subcontract Work, without prior written direction, in each instance, by Contractor.

38 - Clean-up

Subcontractor shall at all times keep all structures and premises free from debris resulting from the Subcontract Work. If Subcontractor fails to keep all structures and premises free from debris, Contractor may give Subcontractor notice to clean up such areas. If Subcontractor fails to begin such clean up measures within twenty-four (24) hours after written notification from Contractor, Contractor may implement such clean up measures without further notice and deduct the cost thereof from any amounts due or to become due to Subcontractor.

39 - Quality Assurance and Control

Subcontractor shall inspect all of the Subcontract Work and shall conduct a continuous Quality Assurance and Control Program for all of the Subcontract Work performed under the Contract Documents. Subcontractor's Quality Assurance and Control Program shall, at a minimum, meet the requirements of the Contract Documents and shall be satisfactory to Contractor. Subcontractor shall require its sub-subcontractors to maintain approved quality control systems where applicable to the Subcontract Work.

40 - Final Completion

The Subcontract Work or any portion of the Subcontract Work or any repair, replacement or re-performance of prior equipment, materials, services or other work under warranty or otherwise shall not be deemed complete until Contractor has notified Subcontractor of its final acceptance of same ("Final Completion").

41 - Subcontracts

Subcontractor shall not subcontract any portion of the Subcontract Work without the prior written consent of Contractor in each instance. Any portion of the Subcontract Work to be performed for Subcontractor by a sub-subcontractor shall be performed pursuant to a written subcontract between Subcontractor and its sub-subcontractor. Subcontractor shall require its sub-subcontractors to assume the same duties and obligations towards Contractor and Owner that Subcontractor assumes under the Contract Documents. Prior to the execution of a subcontract, Subcontractor shall make available to each of its proposed sub-subcontractors a copy of the applicable Contract Documents with pricing information redacted. No subcontract shall relieve Subcontractor of its obligations under the Contract Documents for the Subcontract Work or the Project. Subcontractor shall be fully responsible for the management and direction of its sub-subcontractors, their agents and employees and shall be as fully liable for the acts and omissions of its sub-subcontractors, their agents and employees as it is for the acts and omissions of Subcontractor's own employees. Contractor shall have no duty or obligation to any sub-subcontractor of Subcontractor unless, and then only to the extent that, Contractor specifically agrees in writing to be bound.

42 - Subcontractor's Payments to Sub-Subcontractors

Subcontractor shall pay each of its sub-subcontractors, suppliers and vendors promptly upon receipt of payment from Contractor or as provided in the Contract Documents. Contractor shall have no obligation to pay any of Subcontractor's sub-subcontractors, suppliers or vendors or to ensure that such payments are made. Prior to final payment being made, Subcontractor must provide to Contractor a final lien waiver, release of all claims and an affidavit confirming that all such payments have been made, as provided in Section 6 hereof.

43 - Manufacturing Standards

Reference to any component, process or material by trade name, make, or catalog number, shall be regarded as establishing a standard of quality under this Subcontract Agreement or any Contract Document. When required by the Contract Documents or when requested by Contractor, Subcontractor shall furnish to Contractor for its approval the manufacturer's name, the model number, rating, capacity, nature, and any other performance related data, for each component that Subcontractor contemplates incorporating in the Subcontract Work. If the Contract Documents require, samples shall be submitted for approval at Subcontractor's expense, including all shipping charges being prepaid by Subcontractor. Materials installed or used without required approval may be rejected by Contractor and shall be removed and replaced by Subcontractor at Subcontractor's expense.

44 - Shipment

Any materials to be delivered subject to the Contract Documents shall be delivered FOB destination. Shipments must be wrapped, packed, crated, loaded, enclosed, and braced in manner so as to prevent damage or shrinkage and in accordance with any applicable standards or regulations. Subcontractor shall not make delivery of any material in advance of dates specified in the Purchase Order or Schedule without the prior written consent of Contractor.

45 - Safety and Security

- A. The Subcontractor shall be solely responsible (including, without limitation, when using any of Contractor's or Owner's facilities or equipment in connection with the Subcontract Work) for the safety and security of its employees, as well as its sub-subcontractors, vendors, suppliers and invitees while working on the Subcontract Work. Subcontractor shall pursue the Subcontract Work in a safe manner at all times, taking all necessary precautions to avoid injury to any person and damage to any property. Subcontractor shall develop, maintain and enforce a comprehensive safety and health program that meets or exceeds all applicable federal, state and local safety related laws and regulations during the performance of the Subcontract Work. Subcontractor shall comply with all laws, ordinances, codes, rules, regulations and standards relative to safety and health, including, without limitation, the Occupational Safety and Health Act of 1970 and any and all amendments thereto, as well as the requirements of Contractor's and Owner's safety rules and procedures.
- B. Subcontractor shall, and shall require all of its sub-subcontractors to, provide their workers with all appropriate safety equipment, which shall be worn, used and maintained in good condition at all times while at the Site.
- C. Subcontractor shall comply with Contractor's and Owner's rules and policies governing the admittance of Subcontractor's employees to the Site and their identification while working on the Site. All persons entering or leaving the Site may be subject to a search of their person, effects, and vehicles in accordance with Contractor's or Owner's security rules and procedures.
- D. Subcontractor shall immediately report to Contractor each accident and injury involving its employees, sub-subcontractors, suppliers or invitees occurring at the Site. Reports of personal injury or death to any person shall be made to Contractor's Authorized Representative as soon as possible and in all cases within twelve (12) hours of the incident or, if earlier, within the period of time required by the Prime Contract.
- E. Subcontractor shall ensure that all hazardous substances supplied and/or used in the performance of the Subcontract Work are properly stored and labeled. Subcontractor shall not bring, nor permit its sub-subcontractors or others performing the Subcontract Work to bring any hazardous substance to the Site that is prohibited by the Contract Documents without specific approval from Contractor or Owner. Should any hazardous substances be permitted at the Site by Contractor or Owner, Subcontractor shall ensure

that a copy of the substance's Safety Data Sheet is provided to Contractor and Owner upon its arrival to the Site. Subcontractor is responsible for disposing of, in accordance with all applicable federal, state and local laws, rules and regulations, any and all surplus hazardous substances brought to the Site by Subcontractor or any of its sub-subcontractors (regardless of tier) and all hazardous wastes generated by Subcontractor or any of its sub-subcontractors (regardless of tier) while at the Site.

- F. Subcontractor agrees to implement and enforce a Drug and Alcohol Policy acceptable to Contractor and Owner and shall provide written confirmation to Contractor prior to commencement of the Subcontract Work that such policy is in full force and effect.
- G. If Subcontractor or any of its sub-subcontractors, vendors, suppliers or invitees fails to comply with any requirement of this Section 45, Contractor and Owner shall have the right, but not the obligation, to require Subcontractor to correct such failure and to immediately stop all or any portion of the Subcontract Work until such failure is corrected. If Subcontractor fails to meet the safety standards of Contractor or Owner, Contractor may require Subcontractor to assign an additional dedicated Site safety representative at the cost of Subcontractor. Whether or not all or any portion of Subcontract Work is stopped, Subcontractor's refusal or failure to correct any such failure within twenty-four (24) hours of being notified by Contractor or Owner to do so shall constitute a default by Contractor. Any violation of this Section 45 shall entitle Contractor or Owner to have those responsible for the violation immediately removed from the Site without prior notice or warning. Subcontractor shall not be entitled to any extension of time on account of any of the Subcontract Work being stopped, or to claim any additional costs on account of corrective actions it is required to take, as a result of a failure to comply with this Section 45.
- H. Subcontractor shall be solely responsible for ensuring that any and all of its employees, sub-subcontractors, vendors, suppliers or invitees (of any tier) are properly trained, qualified and certified (if applicable) to use and operate any and all equipment or facilities, owned or provided by Contractor or Owner.

46 - Cumulative Remedies

The rights and remedies of Contractor as specified in the Contract Documents shall be cumulative and in addition to all other rights and remedies Contractor may have in law or in equity or otherwise. In the event of a conflict between or among available remedies, Contractor may choose from and pursue any combination of available remedies. All of Contractor's rights and remedies herein specified shall survive the termination or expiration of this Subcontract Agreement or any Purchase Order, regardless of whether survivability is specified in any particular Section.

IN WITNESS WHEREOF, the parties have executed this Subcontract Agreement as of the Effective Date.

Company Name

By: _____

Date

Title:
