

1. **PRECEDENCE.**

In the event of any discrepancy between the various documents constituting the Contract Documents, the document imposing the higher or more restrictive standard upon the Service Provider shall prevail.

2. **REGULATIONS, LAWS, PERMITS, ETC.**

The laws of the place of the Project shall govern the Services. In performing the Services, the Service Provider shall comply with all laws, statutes, regulations, ordinances, and codes which are or come into force during the performance of the Service and which relate thereto. Unless otherwise stipulated the Contractor shall obtain the building permit. The Service Provider shall obtain all permits, licenses and certificates relative to the Services.

3. **INSTRUCTIONS AND DECISIONS.**

The Service Provider will carry out the instructions of the Contractor relative to the Services. Should the Service Provider hold such instructions to be at variance with this Subcontract or to involve changes in services already performed or to be given in error, the Service Provider shall notify the Contractor before proceeding to carry them out. If the Contractor and the Service Provider fail to reach agreement with respect to any such instruction and the Contractor directs to have such instruction carried out, the Service Provider shall comply with such instruction without delay. Any unresolved questions or difference of cost resulting from any such instruction shall be decided in the manner provided by Section 16 hereof.

4. **CHANGES TO THE SERVICES.**

The Service Provider shall not make any changes to the scope of the Services without the written consent of the Contractor. The Contractor may order changes to the Services and shall do so in writing.

5. **EMERGENCIES.**

The Service Provider acknowledges that the Contractor has authority in an emergency to stop the performance of the Services whenever in its opinion, such stoppage may be necessary to protect the health and safety of any person, the environment or any part of the Project, or any neighboring property. Where such stoppage is made necessary by acts or omissions of the Service Provider, any costs for such stoppage will be to the Service Provider's account.

6. **PROTECTION OF THE PROJECT AND PROPERTY.**

The Service Provider shall not cause damage to the Project or property of others. In the event of any damage to the Project or property of others, caused by the negligence of the Service Provider, the Contractor shall have authority to assess all such damages and may deduct the cost thereof from payment then or thereafter due to the Service Provider.

7. **PERFORMANCE OF SERVICES.**

The Service Provider will perform the Services in accordance with the Contract Documents and with the skill, diligence, timeliness and competence of similar professionals. No payment to the Service Provider shall be construed as an acceptance of any services not so performed.

8. **BONDING.**

The Service Provider, if requested, must produce the Surety Bonds and/or Service Provider Performance Security in a form acceptable to the Contractor and must maintain same in good standing until completion of this Subcontract. The cost of the Surety Bonds and/or Service Provider Performance Security shall be borne by the Service Provider if called for at the time of tendering, but otherwise the cost shall be borne by the Contractor.

9. **INSURANCE.**

- (a) The Service Provider shall, without limiting its obligations or liabilities as stated elsewhere in this Subcontract, obtain and continuously maintain at its own expense and cost, the following insurance coverages:
- (i) Workers' Compensation insurance covering all employees engaged in performing the Services in accordance with the statutory requirements of the Province or Territory having jurisdiction over such employees.
 - (ii) General Liability insurance, including coverage for completed operations hazards.
 - (iii) Automobile Liability insurance covering all owned and non-owned motor vehicles operated or used by the Service Provider in the performance of the Services.

- (iv) If watercraft or aircraft are used or operated by the Service Provider in performing the Services, Watercraft and Aircraft Liability insurance; and
 - (v) Errors and Omissions Insurance covering the Service Provider's professional liability.
 - (vi) Such other insurance that may be deemed required by the Owner or Contractor.
- (b) The minimum limit of insurance to be provided by the Service Provider under Section 9 (a) (ii), (iii) and (iv) shall be greater of the corresponding limits required under the Prime Contract and \$5,000,000 per occurrence. Such insurance shall be maintained for at least six (6) years following completion of the Project.
- (c) The minimum limit of insurance to be provided by the Service Provider under Section 9 (v) shall be greater of the corresponding limit required under the Prime Contract and \$2,000,000 per claim. Such insurance shall be maintained for at least two (2) years following completion of the Project.
- (d) The Service Provider's General Liability Insurance shall name both the Contractor and Owner as additional insureds with respect to liability arising out of the operations of the Service Provider in performing this Subcontract and shall provide that the insurer shall waive any right of subrogation against the Contractor and against the Owner.
- (e) On projects where the Owner or the Contractor provide Course of Construction and/or Wrap-Up Liability insurance, such insurance will be subject to deductibles. The applicable deductible shall be the obligation of the party causing the damage or injury. In the case of Course of Construction losses, if no responsible party can be established, the deductible shall be borne by the party or parties whose work has been damaged in proportion to such damage. If the Contractor is providing the Course of Construction and/or Wrap-Up Liability insurance, the applicable deductible shall not be less than \$25,000 per loss. It is the responsibility of the Service Provider to satisfy itself as to the adequacy of such insurance.
- (f) Prior to the performance of the Services and upon request by the Contractor during the performance of the Services, the Service Provider shall provide to the Contractor a certificate of insurance in respect of the required insurance coverages (or a certified copy of the entire policy or policies, if so requested), and a clearance certificate or similar instrument of the relevant Workers' Compensation authority or authorities. The insurer(s) shall provide thirty (30) days notice of cancellation to the Contractor and the Owner of the coverage required under Section 9 (a) (ii), (iii), (iv), (v) and (vi).

10. **INDEMNIFICATION.**

The Service Provider shall indemnify and hold harmless the Contractor, its agents, employees, affiliates, directors and officers from and against any and all claims, demands, losses, costs, damages, actions, suits or proceedings by third parties ("Third Party Liabilities") that arise out of or are attributable to the Service Provider's negligent performance of the Subcontract, providing that such Third Party Liabilities are caused by acts or omissions of the Service Provider or anyone else for whom the Service Provider may be liable.

11. **CONTRACTOR'S RIGHT TO STOP THE PERFORMANCE OF SERVICES, OR TERMINATE THE SUBCONTRACT.**

- (a) If the Service Provider should be adjudged bankrupt, or is unable to meet its financial obligations as they become due, or makes a general assignment for the benefit of creditors, or if a receiver is appointed, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the Service Provider or receiver or trustee in bankruptcy notice in writing, terminate the Service Provider's right to continue with the performance of the services in whole or in part or terminate the Subcontract.
- (b) If the Service Provider should neglect to perform the Service properly or otherwise fail to comply with the requirements of the Subcontract to a substantial degree, the Contractor may, without prejudice to any other right or remedy the Contractor may have, notify the Service Provider in writing that the Service Provider is in default of the Service Provider's contractual obligations and instruct the Service Provider to correct the default in three (3) Working Days immediately following the receipt of such notice.
- (c) If the default cannot be corrected in the three (3) Working Days specified, the Service Provider shall be in compliance with the Contractor's instructions if the Service Provider:

- (i) Commences the correction of the default within the specified time; and
 - (ii) Provides the Contractor within the three (3) Working Days with an acceptable schedule for such correction; and
 - (iii) Corrects the default in accordance with such schedule.
- (d) If the Service Provider fails to correct the default in the time specified or subsequently agreed upon, without prejudice to any other right or remedy the Contractor may have, the Contractor may:
- (i) Correct such default and deduct the cost thereof from any payment then or thereafter due the Service Provider and any remaining cost due the Contractor shall remain the liability of the Service Provider; or
 - (ii) Terminate the Service Provider's right to continue with the Subcontract Work in whole or terminate the Subcontract.
- (e) To the extent of the Owner's right to terminate the Prime Contract for convenience or otherwise without cause, the Contractor shall have the right to terminate this Subcontract for convenience or otherwise without cause by providing the Service Provider with a written Notice of Termination, to be effective upon receipt by the Service Provider. If the Subcontract is so terminated, the Service Provider shall be paid for Services duly performed up to the date of termination. The Service Provider shall only be entitled to prospective profits on unperformed Services to the extent that the Contractor is able to recover such Service Provider's prospective profits from the Owner.
- (f) In the event of default by the Owner under the prime Contract, the Contractor shall have the right to terminate this Subcontract by providing the Subcontractor with a written Notice of Termination, to be effective upon receipt by the Service Provider. In such case, the Service Provider shall only be entitled to such payments in respect of the Services performed as the Contractor is able to secure under the Prime Contract.

12. **SERVICE PROVIDER'S RIGHT TO SUSPEND SERVICES OR TERMINATE SUBCONTRACT.**

If the Service Provider has submitted proper progress claims on time to the Contractor and such claims are not paid when due, the Service Provider may, upon five (5) days written notice to the Contractor, stop performance of the Services and may terminate this Subcontract fifteen (15) days after giving such notice to the Contractor and recover payment for all Services performed. The Service Provider may not terminate this Subcontract if payment of any sums overdue is made by the Contractor to the Service Provider before the expiry of the fifteen (15) day notice period.

13. **ASSIGNMENT.**

Neither party to this Subcontract shall assign this Subcontract or any part thereof without the prior written consent of the other party, except in the case of an assignment by the Contractor to an affiliate, in which case the Contractor shall provide written notice to the Subcontractor and the Contractor shall remain liable for its obligations hereunder. The Service Provider will not assign payments under this Subcontract without the written consent of the Contractor, provided always, however, that the Service Provider by reason of this provision will not be precluded from assigning or pledging the benefits of this Subcontract in the normal course of business. The Service Provider agrees that it shall not employ any party to whom the Contractor may reasonably object.

14. **INSOLVENCY AND BANKRUPTCY.**

In the event of the insolvency of the Service Provider this Subcontract shall, at the option of the Contractor, cease and terminate and, in that event, the assignees or trustees in bankruptcy of the Service Provider shall not acquire any interest in or to this Subcontract but shall be paid (but in all cases subject to the terms of this Subcontract including without limitation the provisions of Section 11 hereof) only for such services as the Service Provider shall have performed and been unpaid for as at the date of insolvency or bankruptcy. The Contractor's determination of the amount payable as at the date of insolvency or bankruptcy shall be conclusive.

15. **SETOFF.**

If the Service Provider should become bankrupt or insolvent or have a receiver appointed for it, or if a judgment is obtained against it and is not promptly satisfied by it or if the Service Provider should fail or refuse to promptly pay or settle accounts and/or claims against it with respect to the Services or if a lien should be claimed or filed with respect to the performance of the Services by the Service Provider, then and upon any such occurrence the Contractor, after seven days written notice to the Service Provider, shall have the right to pay such sums as may be necessary to satisfy such claims and shall have the right to setoff against the sums so paid, firstly, any monies otherwise payable to Service Provider under this Subcontract and secondly, any other agreement between the Contractor and the Service Provider.

16. **DISPUTES.**

In the case of any dispute arising between the Contractor and the Service Provider as to their respective rights and obligations under the Subcontract, the Contractor, in the first instance shall interpret and provide its decision in writing.

Differences between the parties as to the interpretation, application or administration of the Subcontract or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by decisions of the Contractor shall be settled as follows:

- (a) The Service Provider shall be conclusively deemed to have accepted the Contractor's written decision and to have expressly waived and released the Contractor from any claims in respect of the particular matter unless within ten (10) working days after receipt of that decision, the Service Provider provides written notice to the Contractor of any dispute in respect of such decision.
- (b) The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations.
- (c) If the dispute is not resolved by negotiations, either party shall be entitled to request the use of a mediator to be appointed through mutual agreement to assist the parties to reach agreement on any unresolved dispute.
- (d) Failing agreement as to the appointment of a mediator within thirty (30) days of such dispute arising or failing resolution through mediation and subject to the Contractor's pre-emptive rights below, either party shall be entitled to give the other notice of a request to arbitrate.
- (e) The arbitration shall take place in the jurisdiction of the place of the Services in accordance with the National Arbitration Rules of the ADR Institute of Canada, Inc. and the decision of the arbitrator will be final and binding upon the parties. The language of the arbitration will be English.
- (f) Should any dispute or portion of any dispute between the Contractor and the Service Provider relate to a dispute between the Owner and the Contractor, and where the Prime Contract provides for dispute resolution by arbitration, the Contractor may direct that such dispute or portion thereof as between the Contractor and Service Provider be disposed of at the same time in the same arbitral proceedings by the arbitrator(s) as is appointed to resolve the dispute between the Owner and the Contractor, and the Service Provider agrees to such direction and joinder of proceedings.
- (g) Where the Prime Contract provides for dispute resolution by litigation, or where the Contractor otherwise notifies the Service Provider of its intention that any disputes not resolved following mediation be resolved by litigation, notwithstanding any request for arbitration issued by the Service Provider, the Contractor shall have the pre-emptive right to issue written notice to the Service Provider directing the waiver of arbitration proceedings hereunder, and such dispute will be resolved at the same time and in the same proceedings between the Owner and the Contractor or, where no such proceedings exist, then in litigation proceedings between the Contractor and Service Provider. In such case, the parties attorn to the exclusive jurisdiction of the courts in the Province where the Project is situated, irrespective of conflict of laws rules.
- (h) The Service Provider acknowledges that notwithstanding the referral of any dispute to the procedures hereunder, it shall not be entitled to suspend or delay the performance of the Services.

17. **SAFETY**

In addition to acknowledgement and acceptance of the Contractor's Safety and Loss Prevention Policy Program as governing the Services, the Service Provider agrees to implement and administer the following procedures:

- (a) The Service Provider shall implement a safety and loss prevention program that meets or exceeds the requirements of the Contractor's Safety and Loss Prevention Program. If any part or parts of the Service Provider's program are deemed by the Contractor not to comply with the requirements of the Contractor's Safety and Loss Prevention Program, the Service Provider shall implement the corresponding part(s) of Contractor's Safety and Loss Prevention Program. The Service Provider shall also implement and comply with the Owner's Occupational Health and Safety requirements.
- (b) The Service Provider shall comply with all local, provincial and federal Occupational Health and Safety legislation and regulations.
- (c) The Service Provider shall actively promote safe working performance on the part of its personnel. The Service Provider's Site Supervisors shall attend all Supervisory Personnel Safety Meetings as may be scheduled by the Contractor's Project Superintendent. The Service Provider will also conduct its own safety program best suited to its practical needs.
- (d) The Service Provider shall have a Representative at the Scheduled Tool Box Safety Meetings and inform all of its employees of current safety procedures on the Project site.
- (e) The Service Provider shall cooperate with all Safety Representatives having jurisdiction at the Project site.
- (f) The Service Provider shall insure that before any of its personnel begin work on the Project, that its employees have been advised and indoctrinated as to the safety rules and procedures of the Contractor's Safety and Loss Prevention Program.
- (g) The Service Provider shall inform its personnel of the location and use of emergency equipment.
- (h) The Service Provider shall inform its personnel of existing project procedures for First Aid and Ambulance calls.
- (i) The Service Provider shall take immediate action to correct unsafe practices or conditions when reported or observed.
- (j) The Service Provider should use its own regular system of inspection to detect and correct hazardous conditions, safety rule violations and unsafe working practices in its own area, provided such system meets or exceeds the system of inspection set out in the Contractor's Safety and Loss Prevention Program.
- (k) The Service Provider shall at all times provide and enforce the use of personal protective equipment required by Workers' Compensation Board, local, Provincial, and Federal Regulations.
- (l) The Service Provider shall at all times employ good and orderly housekeeping methods. Special attention must be given to maintaining clear walkways, removal of trash, removal of slipping and tripping hazards, and proper storage of materials. Temporary material storage accesses must be requested and cleared through the Project Superintendent and kept neat at all times.
- (m) The Service Provider Site Supervisor or its representative shall give their current address and telephone number to the Contractor's Project Superintendent so that they may be contacted after hours in case of any emergency involving hazard, loss or damage of the Subcontractor's job or equipment.
- (n) The Service Provider must attend the pre-job Safety Meeting, if applicable, and at least one (1) site person, preferably the Service Provider's Site Superintendent, must attend.

- (o) If the Service Provider violates, breaches or disregards the Occupational Health and Safety legislation and regulations or the Contractor's Safety and Loss Prevention Program rules and procedures, the Contractor may, without any prejudice to any other remedy the Contractor may have, terminate the Subcontract in accordance with Section 11(a) and the Service Provider will be liable for all resulting losses, costs and damages.

If the Services are to be performed in the Province of Ontario, this section of the Terms and Conditions is hereby expanded to include the requirements set out in Appendix B to the Subcontract. The Service Provider acknowledges the requirements of Appendix B and agrees to implement and administer these requirements in addition to the procedures listed above.

18. **THIRD PARTY INTELLECTUAL PROPERTY.**

The Service Provider shall pay the royalties and patent license fees required for the performance of the Subcontract. The Service Provider shall hold the Contractor harmless from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Service Provider's performance of the Subcontract which are attributable to an infringement or an alleged infringement of a patent of invention by the Service Provider or anyone for whose acts the Service Provider may be liable.

19. **NON-MERGER OF REMEDIES.**

Each of the rights and remedies of the Contractor provided for in this Subcontract shall be in addition to and not in substitution for any of the other rights and remedies of the Contractor provided for in this Subcontract or available to the Contractor at law or in equity and none of such rights and remedies shall be construed so as to limit, prejudice or adversely affect any other of such rights and remedies.

20. **ENTIRE AGREEMENT.**

This Subcontract, together with any documents attached or incorporated, constitutes the entire agreement between the parties, and supersedes all previous communications between them, whether oral or written. No modification of this Subcontract and no waiver of rights under this Subcontract shall be valid or binding on the parties unless the same be in writing. Failure of the Contractor to insist upon strict performance of any term or condition of the Subcontract, or to exercise any option in any one or more instances, shall not be construed to be a waiver of any such term, condition or option, or any other covenants or agreements, but the same shall be and remain in full force and effect. The partial or complete invalidity of any one or more conditions or sentences of the Subcontract shall not affect the validity or continuing force and effect of any other condition. The rights and remedies of the Contractor hereunder will survive termination of this Subcontract for any reason.

21. **ENUREMENT.**

This Subcontract shall enure to the benefit of and be binding upon the parties hereto, their successors, executors, administrators or permitted assigns.