



## General Terms and Conditions for Subcontracts for Canada

**1. Applicability.** These General Terms and Conditions for Subcontracts for Canada shall apply to any and all work, for an ERM company in Canada, by a Subcontractor. These General Terms and Conditions may be modified by ERM from time to time, and the version of these General Terms and Conditions posted on the ERM website: [ERM Subcontract Terms-Americas](#), as of the Effective Date of the Work Authorization (defined below) shall apply to the Work performed under such Work Authorization.

### **2. General Definitions.**

2.1 “Client” means ERM’s client as identified in the Work Authorization.

2.2 “ERM” means the ERM company entering into the Work Authorization.

2.3 “Environmental Laws” means all Laws relating to the environment and protection of health in the broadest sense, including but not limited to those governing or otherwise relating to land, water, erosion and sedimentation, air, health and safety to humans and animals, natural resources, or the use, handling, generation, treatment, storage, recycling, transportation, release or disposal of any hazardous substance, pollutant, contaminant, solid waste, hazardous waste, regulated substance, petroleum product, hazardous material, toxic material, polychlorinated biphenyls or substance containing polychlorinated biphenyls or asbestos or asbestos-containing material.

2.4 “Final Payment” means final payment for the Work, as provided in Section 7.6.

2.5 “Laws” means all federal, provincial, state or local laws, regulations, ordinances, statutes, codes, standards, rules, directives, policies, orders and common law, including without limitation, Environmental Laws related in any way to the Work, laws and regulations concerning import and export of goods, information, equipment and materials, and any applicable anti-bribery/corruption laws, including but not limited to the UK Bribery Act, the U.S. Foreign Corrupt Practices Act, the Corruption of Foreign Public Officials Act, and all applicable local Canadian criminal laws.

2.6 “Party” or “Parties” means ERM and/or Subcontractor as applicable.

2.7 “Prime Contract” means the contract between ERM and its Client that is identified in the Work Authorization and covers the project that is the subject of the Work.

2.8 “Subcontract” means (i) these General Terms and Conditions, (ii) the Subcontract Work Authorization - Canada signed by ERM and Subcontractor and all documents, drawings, specifications, schedules, data or information listed or identified therein (the “Work Authorization”), (iii) any Special Terms and Conditions expressly identified in the Work Authorization, (iv) the Prime Contract; (v) ERM’s Supplier Code of Business Conduct and Ethics posted at [ERM Global Requirements for Suppliers & Subcontractors](#) as of the Effective Date and (vi) any Change Orders, as defined in Section 8.1, made properly in accordance with these General Terms and Conditions.

2.9 “Subcontractor” means the party entering into a Work Authorization as subcontractor with ERM.

2.10 Terms defined in these General Terms and Conditions shall have the same meanings when used in the Special Terms and Conditions and Work Authorization, unless a separate definition is used therein.

**3. Effective Date.** The effective date of the Subcontract is the date stated on the Work Authorization (the “Effective Date”).

**4. Scope of Work.** Subcontractor shall furnish all services, supervision, labor, materials, tools, supplies, goods and equipment and shall perform all work necessary for the complete, proper, timely and safe completion of the Work as described in the Work Authorization in accordance with the terms of the Subcontract (collectively, the “Work”).

### **5. Incorporation of Prime Contract.**

5.1 Subcontractor agrees that Subcontractor shall be bound by the Prime Contract, which is incorporated herein by reference. With respect to the Work, without limiting any obligations otherwise set forth in the Subcontract, Subcontractor shall assume toward ERM all the obligations, risks and responsibilities that ERM, by the Prime Contract, assumes toward Client, including all requirements relating to quality/warranty, quantity and timeliness of Work. ERM shall have the benefit of all rights, remedies and redress against Subcontractor that Client, by the Prime Contract, has against ERM. Where any provision of the Prime Contract conflicts with a provision of the Subcontract, the more stringent provisions shall govern, unless otherwise agreed in the Work Authorization. Subcontractor

acknowledges that it has been given ample opportunity to review the Prime Contract, and that Subcontractor has reviewed the Prime Contract to the extent it feels necessary to understand all of the requirements of the Subcontract.

5.2 Notwithstanding any contrary provisions in these General Terms and Conditions, as to Subcontractor's liability to ERM arising from the performance of the Work, Subcontractor shall have the benefit of applicable limitations of ERM's liability to Client, and indemnifications of ERM by Client, if any, set forth in the Prime Contract, only to the extent that ERM chooses, in its reasonable judgement, to enforce such limitations or rights and succeeds in such enforcement.

## **6. Invoicing.**

6.1 Unless otherwise provided specifically in the Work Authorization, no later than the fifth (5th) day of each month, Subcontractor shall invoice ERM for that portion of the Work completed during the preceding month. Invoices must be in strict accordance with the Schedule of Rates and/or other fee and payment provisions set forth in the Work Authorization.

6.2 Subcontractor shall submit monthly invoices to ERM for Work properly performed in the preceding month, along with such supporting documentation as ERM may reasonably require. ERM may prescribe the format of such invoice. Invoices shall be sent to the email address for Accounts Payable set forth in the Work Authorization, with Subcontractor's name and the invoice number in the subject line.

6.3 Invoices submitted by Subcontractor will:

6.3.1 Show the name of the Project, ERM's Job Number, the names of each person performing the Work, their respective labour categories, their hourly rates and the number of hours and respective days worked on the Project during the invoice period;

6.3.2 Identify reimbursable direct non-salary expenses incurred hereunder;

6.3.3 Make reference to this Subcontract or otherwise identify the invoice in such manner as ERM may reasonably require; and

6.3.4 Include the total authorized compensation, the amount of the current invoice, the cumulative invoiced amount to date, and the amount of compensation remaining under the Subcontract.

6.4 Subcontractor shall coordinate the submittal of its invoice for inclusion with the invoice submitted by ERM to its Client. A specific monthly submittal date will be established. If Subcontractor's invoice is received after the specified date, the invoice will be included in ERM's invoice to the Client for the subsequent month.

6.5 Failure of Subcontractor to comply with the prescribed format or failure to provide adequate supporting documentation may result in rejection of the invoice. In the event that ERM disputes any amount as being due or lacking sufficient supporting data, ERM will include all amounts not in dispute in the invoice which ERM submits monthly to its Client. When the amounts in dispute are resolved to the reasonable satisfaction of ERM, those amounts shall be submitted to the Client for payment in the next monthly invoice.

6.6 ERM shall have no duty to compensate Subcontractor for any invoice that is not timely submitted in accordance with the Subcontract.

## **7. Payment Terms.**

7.1 Progress Payments. ERM will submit Subcontractor's invoice with its next monthly invoice to Client. ERM will pay Subcontractor for undisputed amounts within ten (10) days after Client's payment to ERM. Subcontractor agrees that progress payments are subject to the absolute condition precedent that the Client and ERM have approved the Work as being in accordance with the Subcontract, that the Subcontractor has complied with all the invoicing requirements of Section 6 and that the Client has paid ERM for that Work. ERM shall not be required to pay Subcontractor amounts in excess of those actually accepted and paid by the Client for any Work, and Subcontractor expressly assumes the risk of nonpayment by Client. If the provision to pay Subcontractor after payment by Client is narrowed by judicial construction or otherwise, found to be invalid or is otherwise unenforceable, then the provision shall be reformed to provide that ERM will pay Subcontractor for undisputed amounts upon the earlier of (i) thirty (30) days after Client's payment to ERM or (ii) one hundred and twenty (120) days after ERM receives Subcontractor's invoice, except to the extent that any failure of Client to pay invoiced amounts is attributable to acts or omissions of Subcontractor. A progress payment by ERM shall not constitute acceptance of Work not in accordance with the Subcontract.

7.2 Retainage. Until Final Payment as provided in Section 7.6, a retainage of ten percent (10%) may be withheld from each Progress Payment, unless a higher percent retainage is specified in the Work Authorization or Prime Contract.

7.3 Withholding Payments. ERM may withhold payment otherwise due to Subcontractor without payment of interest on account of (i) faulty or defective Work performed and not immediately remedied by Subcontractor, (ii) the filing of claims or reasonable evidence indicating the probable filing of claims or fines against ERM or Client relating to the Work, (iii) failure of Subcontractor to pay amounts when due for labor, materials or equipment used by Subcontractor in performing the Work, (iv) reasonable evidence that lump sum price items cannot be completed for the unpaid balance of the agreed lump sum price; (v) damage to property of ERM or Client; (vi) reasonable evidence that the Work will not be completed in accordance with the schedule; or (vii) any material breach of the Subcontract. The remedy of withholding payment is not exclusive. If Subcontractor fails or refuses to remedy or remove any cause for withholding payment, ERM may take whatever steps necessary to remedy or remove such cause and may deduct the cost from the amounts owed to Subcontractor. If such cost exceeds the balance of the amounts owed by ERM to Subcontractor, Subcontractor and its sureties, if any, shall be liable for and shall pay the difference to ERM. ERM will have the right to set off, against amounts otherwise payable hereunder, any amounts owing from Subcontractor to ERM whether under the Subcontract or otherwise.

7.4 Direct Payment/Liens. ERM shall have the unrestricted right to make payment directly to any creditor, including any materialmen, suppliers, laborers, or lower tier subcontractors who file or threaten to file a lien, or who becomes entitled to do so because of nonpayment by Subcontractor. In no event shall Subcontractor file or have filed any liens on ERM's client project sites.

7.5 Expenses. Except for the reasonable and actual cost of photocopying (limited to \$CAN 0.10 per page) and telephone expenses, ERM will not pay (i) expenses related to "secretarial overtime" "word processing" and/or "messenger services," or (ii) any ancillary expenses such as "travel time and expenses" or meals, unless such expenses are pre-approved by ERM. Unless otherwise agreed in the Work Authorization, Subcontractor shall not be entitled to any markup on any third party expenses, including, without limitation, lower tier subcontractors.

7.6 Final Payment. Within ten (10) days of completing the Work and as a condition precedent to receiving Final Payment, Subcontractor must provide the following to ERM: (i) documentary evidence (e.g., certificate of payment), satisfactory to ERM, of the proper payment by Subcontractor of all indebtedness incurred for material, labor, supplies, equipment and other costs; (ii) a fully executed waiver of liens and release from claims, including a release of all construction and mechanic's liens in a form satisfactory to ERM, executed by Subcontractor; (iii) a fully executed waiver of liens and release from claims, including a release of all construction and mechanic's liens in a form satisfactory to ERM, executed by all subcontractors and vendors who have rendered services or furnished materials, labor, supplies and equipment to Subcontractor in connection with the Work; and (iv) all final reports, work product, documents, certification and warranties required to be delivered to ERM under the Subcontract or any documents relating hereto. Following ERM's receipt of all of the foregoing items, and Subcontractor's complete performance of its obligations hereunder, including correction of any defective work noted by ERM and/or Client and completion of any punch list items, ERM will issue Final Payment to Subcontractor including any retainage. ERM shall not be required to pay Subcontractor in Final Payment any amounts in excess of those actually accepted and paid by Client with respect to the Work and such payment by the Client to ERM shall constitute an absolute condition precedent to ERM's obligation to make Final Payment to Subcontractor. Final Payment shall not constitute a waiver of any of ERM's claims under the Subcontract, but acceptance of Final Payment shall constitute a waiver of all of Subcontractor's claims for further compensation and any other claims under the Subcontract.

7.7 Non-Resident Income Tax. If Subcontractor is not a resident in Canada, Subcontractor acknowledges that ERM may be required by law to withhold income tax from the fees and then to remit that tax to the Receiver General of Canada on the Subcontractor's behalf.

## **8. Changes in Work.**

8.1 Except as specifically provided in Section 8.3 below, any change in the Work, work outside the scope of the Work Authorization, any adjustment in the compensation due or any time extension with respect to the Work shall be authorized in advance by a mutually signed "Change Order." Except pursuant to Section 8.3.1 below, if Subcontractor performs any extra or different work without previous express written authorization from ERM, ERM shall have no obligation to pay for such unauthorized work.

8.2 Prior to the issuance of any Change Order, the Parties, through their authorized representatives, shall negotiate diligently, reasonably and in good faith to agree on the terms of the Change Order, including without limitation, any monetary amount by which the Subcontract compensation shall be increased or decreased as a result of the proposed Change Order, in accordance with the pricing methods specified in the Schedule of Rates or as otherwise described in the Work Authorization. Subcontractor agrees that exercising flexibility to meet changing circumstances is an obligation undertaken by Subcontractor to ERM hereunder and agrees that Subcontractor's inability to respond reasonably to requested changes will result in irreparable harm to ERM and a material breach of the Subcontract.

8.3 A change in the Work, any adjustment in the compensation due or any time extension of the Work may occur without a Change Order agreed upon in advance under the following circumstances only:

8.3.1 In an emergency affecting the safety of persons or property, where it is impracticable for Subcontractor to obtain immediate written authorization from ERM, Subcontractor shall act, at its discretion, as necessary to prevent threatened damage, injury, or loss, without the need for a Change Order. Any such Work will be completed in accordance with all Laws, with the pricing methods specified in the Schedule of Rates or as otherwise described in the Work Authorization.

8.3.2 Without notice to any surety, ERM may, unilaterally by written order, make any change, including additions, reductions or deletions, in the work to be performed or materials to be furnished under this Subcontract by Subcontractor, and order Subcontractor to perform extra work or work outside the Work Authorization, including but not limited to those circumstances where the Prime Contract allows the Client to impose changes unilaterally. Within ten (10) days from receipt of ERM's notice, Subcontractor shall submit to ERM a detailed estimate with supporting calculations and pricing together with any adjustments in the schedule reflecting any changes in the prices and time for performance as a result of the order. For changes other than those imposed by a change to the Prime Contract, pricing shall be in accordance with the pricing methods specified in the Schedule of Rates or as otherwise provided in the Work Authorization; however, to the extent such pricing is inapplicable, the cost of the change or the amount of the adjustment shall be limited to direct material and direct labor costs. Direct labor for this purpose shall include applicable payroll taxes and direct material shall include taxes and delivery charges. For changes due to a change in the Prime Contract, pricing shall be governed by Section 8.5 below. The additional work or change in work, as applicable, and the impact on fees, and any other material considerations, shall be set forth in a Change Order which shall be signed by both parties at the earliest practical time after notice of the change.

8.4 Subcontractor shall not suspend or delay proceedings with the original Work or the changed or extra work pending discussion of the pricing of Work pursuant to the Change Order, and Subcontractor is obligated to continue Work. Except pursuant to Section 8.3, no claim for additional compensation or time, whether for extra labor and materials furnished, changes or otherwise, shall be due from ERM in favor of Subcontractor unless set forth in a mutually signed Change Order.

8.5 If a Change Order is made pursuant to a change to the Prime Contract requiring additional work (whether unilateral pursuant to Section 8.3.2 or otherwise), ERM shall not be liable for a sum greater than that obtained from Client for such additional work, less ERM's overhead and profit, fees and costs, and expenses incurred by ERM in the collection of any such sum. The recovery by Subcontractor for the cost of the Work shall be conditioned upon prior recovery by ERM from Client. In the event of a deduction resulting from a change under the Prime Contract, the deduction made by Client shall be binding upon Subcontractor.

**9. Force Majeure.** As used herein, "Force Majeure" means circumstances beyond the control of the Party thereby affected, including, but not limited to, acts of God, fire, flood, windstorm, earthquake, explosion, riot, sabotage, war, terrorism, threat of terrorism and any resulting security measures, strikes or other concerted work stoppages, lockouts, injunctions, civil unrest, inability to obtain raw material, supplies or energy, unscheduled outages or shutdowns or the loss of any necessary utility. Any delay in or failure of performance of either Party caused by a Force Majeure event shall not constitute a default under the Subcontract or give rise to any claim for damages. The Party affected by Force Majeure shall use reasonable efforts to minimize the effect and duration of such Force Majeure event, and shall inform the other Party in writing as soon as possible, but no later than three (3) days from the commencement of the Force Majeure event. Provided such notice is given, the obligation affected by a Force Majeure event shall be automatically and exclusively extended for a time equal to the delay caused by such Force Majeure event, except that no extension shall be granted if such Party's performance would have been delayed by the Party's fault or negligence. Subcontractor agrees that said extension of time shall constitute Subcontractor's sole remedy for the impact of a Force Majeure event, and that under no circumstance shall Subcontractor be entitled to any damages, direct or indirect, resulting from the Force Majeure event. Nothing in this paragraph shall be construed as preventing ERM from exercising its right of termination of this Subcontract.

## **10. Representations, Warranties, Responsibilities.**

10.1 Subcontractor represents and warrants that any goods, equipment, and Work provided or performed by it or any of its subcontractors shall (a) comply with all Laws; (b) comply with the terms of the Subcontract; (c) be performed by the proper number of experienced, skilled, registered and licensed personnel, qualified by education and/or experience to perform the Work; (d) conform to the standard of care, skill, and diligence exercised by other similar professionals performing the same or similar services; and (e) be in accordance with the best current technological practices, means, methods, procedures and techniques for projects similar to the Work. Subcontractor represents and warrants that it is in compliance with all Laws and shall be in compliance with all Laws for the duration of the Subcontract.

10.2 The Subcontractor represents that it is fully able and qualified to perform the Work and that it has the expertise, experience and knowledge, as well as the necessary personnel and financial capability to perform the Work in accordance with the terms of the Subcontract.

10.3 In addition to and not in limitation of any other rights and remedies of ERM in connection with the Work, Subcontractor agrees to promptly re-perform and correct at its expense any Work that fails to conform to the standard of care and other warranties that Subcontractor has promised pursuant to this Section 10.

10.4 Subcontractor shall be responsible for obtaining, maintaining and paying for all permits, licenses, certificates, insurance, fees, or notifications required by Laws for the performance of the Work. Further, at Subcontractor's own expense, Subcontractor shall furnish any bonds, security or deposits required to permit performance of the Work, including without limitation any bonds requested by ERM or Client.

10.5 Subcontractor warrants that its equipment shall be maintained in good and safe condition and shall be suitable for the use described in the applicable Work Authorization. Subcontractor warrants that all goods and materials furnished are new, in good working condition and free of defects, except as otherwise expressly allowed by the Subcontract, and that ERM shall receive good and marketable title to the same. To the extent the Work Authorization provides for specific brands or models of goods, equipment or materials, no substitutions shall be permitted, and Subcontractor warrants that it shall not substitute any such materials.

10.6 All warranties provided or available to Subcontractor for any goods, equipment, services or supplies procured by Subcontractor in connection with the Work shall be for the benefit of ERM and the Client, as well as Subcontractor, and Subcontractor shall take all steps to ensure that ERM and Client have all rights to claim directly under such warranties.

10.7 Subcontractor assumes the sole risk of damage to or destruction of any equipment used by Subcontractor in performing Work or any other equipment provided by Subcontractor.

10.8 Except as expressly stated otherwise in the Subcontract, Subcontractor shall arrange for the complete handling of all materials, goods, equipment and construction equipment required to perform the Work, including inspection, expediting, shipping, unloading, receiving, customs clearance, security and claims and all other things and services necessary or desirable to perform and complete the Work.

10.9 Subcontractor, at its own expense, shall inspect materials, goods and equipment furnished and Work performed. ERM, Client, and their respective representatives shall have the right to inspect the Work and, for the purposes of such inspection, shall have full and free access to all pertinent locations including, but not limited to, shops, factories or other places of business of Subcontractor and its subcontractors and suppliers. ERM shall have the right to review, evaluate and approve Subcontractor's parts and supplies and sources for such parts and supplies (such approval shall not be unreasonably withheld), and to specify types of parts used in manufacture and/or repair of goods or equipment. Subcontractor shall not be entitled to any additional compensation as a result of ERM's lack of approval of parts, supplies and/or sources for such parts and supplies, as a result of ERM's specification of any type of part to be used in the manufacture and/or repair of goods or equipment. Any changes to parts, supplies and sources must be approved in writing by ERM.

10.10 Prior to commencing Work, Subcontractor shall disclose to ERM in writing any collective bargaining (i.e., union) agreements applicable to performance of the Work. Subcontractor shall comply with any and all applicable collective bargaining agreements. Should any work stoppage occur due to non-compatibility of labor, Subcontractor shall change to workers of proper affiliations so that work will be continuous and uninterrupted. Subcontractor shall advise ERM promptly, in writing, of any labor dispute or anticipated labor dispute that may be expected to affect the performance of the Work.

10.11 If the Work Authorization specifies certain named employees of Subcontractor to perform tasks in connection with the Work, no change will be made in such Subcontractor Key Personnel defined in the Work Authorization without ERM's prior written approval, which approval shall not be unreasonably withheld or delayed. By written notice, ERM may require Subcontractor to remove from participating in the Work any employee who, in ERM's opinion, is incompetent, careless, or otherwise objectionable for any reason in compliance with Laws. Upon receipt of such written notice, Subcontractor shall immediately remove that individual from participating in the Work and shall replace him or her with a technically proficient and suitable employee. Subcontractor shall not be entitled to any additional compensation as a result of said removal and replacement. Any Claims against the Indemnified Parties, as defined in Section 11.1, brought by any employee who is removed from a project, shall be the subject of Subcontractors' Indemnity pursuant to Section 11.

10.12 The warranties provided in this Section 10 shall remain in effect for twelve (12) months from the date of final completion of the Work and acceptance by ERM and shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the Subcontract. Subcontractor, at its sole expense shall replace defective materials and equipment and re-execute defective Work which is disclosed to the Subcontractor by ERM within such period.

The foregoing obligations of Subcontractor to replace defective materials and equipment and re-execute defective Work shall continue with respect to such replaced materials or requirement or re-executed Work for a period of one (1) year after the date of such replacement or re-execution. As an example of the effect of Section 5.1, but without limiting Section 5.1, in the event that ERM's warranty to Client extends for a longer period than that set forth in this Section 10.12, Subcontractor's warranty shall remain in effect for as long as ERM's warranty to Client.

10.13 Subcontractor shall assure that each of its permitted lower tier subcontractors, if any, complies with the foregoing requirements.

## **11. Indemnification by Subcontractor.**

11.1 To the full extent permitted by law, Subcontractor agrees to indemnify, hold harmless, and defend (with counsel and in a manner reasonably satisfactory to ERM) ERM, Client, and their respective officers, directors, agents, employees, predecessors, successors, assigns, parent and subsidiary companies, related or affiliated companies, shareholders, partners, independent contractors, and invitees (collectively "Indemnified Parties") from and against any and all claims, suits, losses, liabilities (including without limitation liabilities under any Laws), penalties, fines, judgments, demands, forfeitures, damages (including without limitation consequential damages, lost profits, economic loss, property diminution, stigma damages, punitive damages, liquidated damages arising from delay damage claims Client makes against ERM as a result of delays Subcontractor caused, and ERM's increased costs to perform the Prime Contract as a result of delays or improper work caused by the Subcontractor), response costs, removal costs, remedial costs, investigation costs and natural resource damages, both on-site and off-site (including without limitation at off-site disposal locations), causes of action for personal injury, property damages, trespass, nuisance, negligence, strict liability, professional liability or malpractice, patent, trade secret, copyright or any other intellectual property right, and the costs and expenses incident thereto (including, without limitation, costs of defense, settlement, and attorneys' fees) of whatever kind and nature, whether at law or in equity, whether under state or federal law, statutory or common law and contractual (collectively referred to as "Claims") that any of the Indemnified Parties may hereafter incur, become responsible for, or pay out as a result of the Work, or the furnishing or storing of any materials, or an act or omission of, or breach of any term of the Subcontract by, Subcontractor, lower tier subcontractors, or their officers, directors, parent or subsidiary companies, affiliates, agents, employees or independent contractors, whether or not Subcontractor was negligent, except to the extent such Claims are the direct result of the sole negligence of ERM or its officers, directors, agents or employees.

11.2 To the extent that any liens may legally attach to any portion of the Client's property or the Project Site identified in the Work Authorization, the Subcontractor agrees to defend, indemnify and hold harmless ERM and the Client from and against any and all mechanic's liens or other liens, or claims or rights to enforce liens, including any related expenses and legal fees, against the Project Site or the improvements to be erected thereon arising out of any work to be performed or labor or materials to be furnished under the Subcontract. Neither Final Payment nor acceptance of the improvements erected hereunder shall constitute a waiver of this indemnity. If any such lien or claim for lien shall at any time be filed, the Subcontractor shall promptly cause the lien to be removed, or shall reimburse ERM for all costs it incurs or may be compelled to pay in discharging any such lien or satisfying any such claim, including all legal fees.

11.3 The indemnification obligations contained in this Section 11 with respect to injuries to Subcontractor's employees shall not be limited by any applicable worker's compensation statute or similar law or judicial decision, and Subcontractor hereby waives (solely for the benefit of the Indemnified Parties) any immunity that Subcontractor may have as a result of any payments made by Subcontractor to any employees or under any applicable workers' compensation statute or similar law or judicial decision.

11.4 The Indemnified Party shall notify Subcontractor promptly in writing of any Claim that is subject to Subcontractor's indemnity under this Section 11. Subcontractor shall have no authority to settle any Claim on behalf of an Indemnified Party without that party's prior written consent, such consent not being unreasonably withheld. If Subcontractor fails to defend an Indemnified Party against any such Claim, the Indemnified Party may defend itself and settle any matter as the Indemnified Party in its sole discretion deems appropriate, at Subcontractor's expense. Subcontractor will further indemnify the Indemnified Party for all costs, including attorneys' fees, which are attributed to the Indemnified Party's defense against or settlement of such matter.

11.5 The provisions of this Section 11 shall survive the completion of the Work or the expiration or termination of the Subcontract.

11.6 Subcontractor shall not infringe upon any intellectual property (including but not limited to patents, trademarks or copyrights) ("Intellectual Property") in the performance of this Subcontract. In the event that Subcontractor is alleged to have infringed upon such Intellectual Property, in addition to the Subcontractor's obligations under the Indemnity provisions contained herein, Subcontractor shall, at the sole discretion of ERM and at Subcontractor's sole expense: (i) procure for ERM and Client the right to continue using the infringing subject matter; (ii) replace or modify the infringing subject matter so that it becomes non-infringing but still complies with the requirements of the

Subcontract; or (iii) reimburse ERM for all payments made to Subcontractor relating to or impacted by the infringing material and all costs incurred by ERM and client resulting from such infringement.

## **12. Project Site.**

12.1 Definition. The Project Site is defined in the Work Authorization.

12.2 Duty to Conduct Investigation. Subcontractor represents that before executing the Subcontract it has examined thoroughly and by its own independent investigation the Project Site and has investigated and understands the conditions affecting the execution or cost of the Work, including but not limited to, Laws applicable to the Work, environmental considerations affecting the Work, and difficulties and hazards incident to the Work. Subcontractor has the sole responsibility of satisfying itself concerning the nature and location of the Work and the local conditions at the Project Site, including without limitation accessibility, properly lines, existing improvements, elevations and the location of utilities on, in, at or under the Project Site. Claims for additional compensation or extensions of time because of failure of Subcontractor to familiarize itself with local and special conditions at the Project Site will not be allowed.

12.3 Information Provided By ERM and Client. Subcontractor shall have no right to rely on investigation of subsurface conditions of the Project Site conducted by ERM and/or Client. If ERM or Client provides records of any such investigation by ERM and/or Client to Subcontractor, it shall be for informational purposes only. Neither ERM nor Client assumes any responsibility whatsoever in respect to the sufficiency or accuracy of such investigations, the records thereof, or any interpretations thereof and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing at the Site, or any part thereof, or that unforeseen and unforeseeable conditions may not be encountered, or that Subcontractor may not encounter materials, substances or obstacles other than, or in proportions different from, those indicated on any such records.

12.4 Concealed or Unknown Conditions. If the Subcontractor encounters conditions at the Project Site that are subsurface or otherwise concealed physical conditions unknown to Subcontractor, ERM or Client and that differ materially from those ordinarily found to exist and generally recognized as inherent in activities of the character provided for in the Subcontract, including without limitation, human remains, burial markers, archeological sites, wetlands or hazardous materials or any wastes not identified in the Subcontract, the Subcontractor shall immediately suspend any operations that would affect them and shall notify ERM. Upon receipt of such notice, ERM shall promptly take action to obtain governmental authorization required to resume the operations. The Subcontractor shall continue to suspend such operations until otherwise instructed by ERM but shall continue with all other operations that do not affect those features. Any additional work arising from the existence of such features shall be performed by Subcontractor at its sole cost and expense.

12.5 Subcontractor shall use only such points of ingress and egress at the Project Site as are authorized by ERM and shall restrict its access to those areas specifically authorized by ERM. Subcontractor shall strictly comply with all applicable security requirements.

**13. Time for Performance.** Time is of the essence in the performance of the Work. Subcontractor shall commence Work as prescribed in the Work Authorization and shall perform diligently to completion of all Work to the satisfaction of ERM and Client. Subcontractor shall at all times cooperate with ERM and others engaged in the Work and shall coordinate its efforts with those of all others so as to facilitate the efficient and timely completion of the Work. Subcontractor is responsible, at its own expense, for providing all work forces, additional shifts, overtime, or expedited labor and materials necessary to meet the agreed Work schedule. In addition to any other remedies ERM may be entitled to seek, including without limitation those pertaining to Claims under Section 11, Subcontractor shall be liable to ERM for any and all penalties, fines, fees, damages (actual or liquidated), costs or other payments ERM may be required to pay as a result of any delay in the Work or schedule for performance caused by Subcontractor or its subcontractors.

## **14. Health and Safety; Other Requirements.**

14.1 Safe practices are a priority requirement in the performance of the Work. Subcontractor acknowledges and agrees that (i) it is familiar with any inherent hazardous conditions of performing the Work; (ii) it shall perform the Work at its own risk; (iii) it shall be solely responsible for the health and safety of its employees, agents and lower-tier subcontractors, as well as their property and for providing all necessary safeguards for their protection; and (iv) it shall be solely responsible for (A) selecting, documenting and implementing the means, methods, sequences and procedures to ensure the safe performance of the Work and (B) providing its own site safety coordinator.

14.2 ERM does not assume any responsibility whatsoever for the safety of Subcontractor's personnel or operations. In the event that ERM or Client elect to provide emergency medical treatment or related services, Subcontractor acknowledges and agrees that (a) neither ERM nor Client has any obligation or duty to provide such treatment or services; (b) neither ERM nor Client shall have any liability arising from such treatment or services; and (c)

Subcontractor shall defend, indemnify and hold harmless the Indemnified Parties from any Claims arising from such treatment or services. Neither ERM nor Client shall have any liabilities from failure to provide such treatment or related services.

14.3 Subcontractor shall comply with all applicable local, state and federal safety and health Laws, including without limitation Canada Occupational Health and Safety (OHS) regulations, and any project-specific requirements, or other work rules or procedures, imposed by Client or ERM (whether safety-related or otherwise), whether or not the Subcontractor agrees that those requirements are necessary in order to comply with applicable law.

Subcontractor shall not be entitled to any additional compensation for complying with any health and safety requirements imposed by Laws, Client or ERM. If there is any conflict between any such provisions, Subcontractor shall comply with the most stringent provision.

14.4 In accordance with local, provincial and federal requirements and ERM's and Client's safety requirements, the Subcontractor shall formulate and implement its own safety rules and regulations to promote safe and orderly prosecution of the Work. Such rules shall provide for frequent and regular inspection of the Project Site, materials and equipment by competent persons designated by the Subcontractor. Competent persons mean those capable of identifying existing and predictable hazards and who have the authority to take prompt corrective measures to eliminate them. Prior to commencing the Work, Subcontractor shall provide ERM with a copy of Subcontractor's safety rules and regulations and any other safety-related information requested by ERM.

14.5 Personal Protective Equipment. Subcontractor shall provide its own personal protective equipment ("PPE") if required given the nature of the Work. ERM does not endorse, warrant, or assume any responsibility whatsoever for the adequacy of regulatory standards for the selection of PPE in protecting users from adverse health effects arising from the exposure to hazardous wastes and/or toxic substances while performing any Work pursuant to the Subcontract.

14.6 Emergencies. In the event that in connection with Subcontractor's performance of the Work, any work condition, incident, violation of Laws, event or occurrence, threatens the health or safety of any person, threatens to damage property or the environment, or results in a release to the environment (collectively, "Emergencies"), ERM or Subcontractor shall (i) determine, in the exercise of its reasonable judgment and in compliance with the health and safety requirements discussed herein and all Laws, the need to cease work, evacuate the Project Site, initiate emergency procedures or notify government agencies or authorities, (ii) take all actions necessary to resolve the Emergency, protect health, safety and welfare of any person and comply with all Laws, and (iii) provide immediate telephone notice to Subcontractor or ERM, as applicable, followed by written notice within twenty-four (24) hours of the Emergency. The written notice shall describe the Emergency, the circumstances surrounding it, and all actions taken by ERM or Subcontractor, as applicable, and any governmental agencies in connection with the Emergency.

## **15. Term and Termination.**

15.1 Term. Unless sooner terminated, the Subcontract shall be effective for the period of performance under the Work Authorization.

15.2 Termination for Convenience.

15.2.1 ERM may, in its sole discretion, terminate the Subcontract for convenience at any time, whether or not the Subcontractor is in default, without penalty or obligation, upon giving three (3) days prior written notice to Subcontractor, or immediately upon written notice in the case of termination of the Prime Contract. The Subcontractor's sole and exclusive remedy for termination for convenience shall be payment of:

- (a) Mobilization costs, but only to the extent that they represent actually incurred and documented costs paid for the transport or set-up of equipment or materials, or similar tasks necessary to the commencement of the Work;
- (b) For lump sum price items (other than the line item for mobilization on any schedule of values), a percentage of the agreed lump sum price based on the reasonable value of the Work properly performed up to the time of the termination;
- (c) For unit price items, the agreed unit price multiplied by the number of units actually and properly completed as of the time of termination and accepted by ERM; and
- (d) Reasonable and documented costs the Subcontractor incurs in terminating any subcontracts or rental or purchase agreements in effect at the time of the termination, without any mark-up for overhead or profit.

15.2.2 A termination for convenience shall not relieve the Subcontractor of any responsibility it would otherwise have under the Subcontract to correct work that is defective or otherwise not in conformity with the Subcontract, or to pay any costs arising from such defective or non-conforming work. ERM does not waive any



right or claim to damage which it had under the Subcontract prior to termination, and may pursue or continue to pursue any cause of action arising from actions or omissions of the Subcontractor before termination.

### 15.3 Termination for Default.

15.3.1 The Subcontractor agrees that it materially breaches the Subcontract if the Subcontractor (i) fails to promptly pay for materials, supplies, labor, or other items purchased or used in connection with the Work, (ii) fails to pursue Work promptly, in accordance with the Subcontract and the schedules established by the Client or ERM, or misses any milestones that have been established in the schedule, (iii) fails, due to strikes, picketing, boycotts, cessations of work, or for any other reason, to supply a sufficient number of properly skilled supervisors, workmen, or sufficient amounts of materials, equipment, or supplies of the appropriate quality to properly and expeditiously carry on Work, (iv) interferes with, disrupts, or threatens to interfere with or disrupt the operations of ERM, the Client, or any other laborer, materialmen, supplier, subcontractor, or other person working on the Project Site, whether due to labor disputes, picketing, boycotting, or any other reason, (v) has filed against it any lien for unpaid taxes for federal, state or municipal authorities, (vi) files a voluntary petition under any chapter of the Bankruptcy Code, has an involuntary petition filed against it, makes a general assignment for the benefit of its creditors, or has a receiver appointed, (vii) allows any insurance required under the Subcontract to lapse, has such insurance canceled, or otherwise fails to maintain all insurance coverages required hereunder for the full term required by the Subcontract, (viii) fails, upon demand, promptly to remove liens that have been placed upon the Project Site or defend lien claims, (ix) fails to promptly indemnify ERM against any payment bond claims asserted as a result of the Subcontractor's failure to pay its lower tier Subcontractors or suppliers, or (x) fails to carry out the Work in a proper, workmanlike manner, and in full compliance with the Subcontract. This list is not intended to be exhaustive, and other breaches by the Subcontractor may also be material.

15.3.2 If the Subcontractor materially breaches the Subcontract, ERM may terminate the Subcontract for default upon three (3) days written notice to the Subcontractor. The termination shall take effect three (3) days after the date of the notice. However, the termination will not take effect if (i) the Subcontractor cures the breach to ERM's satisfaction before the effective date of the termination, and ERM so notifies the Subcontractor, or (ii) with respect to breaches that cannot reasonably be cured within three (3) days, the Subcontractor has, within the three (3) days, taken meaningful steps towards curing the breach and presented ERM with a definite plan to cure the breach, which is acceptable to ERM in its sole discretion. Upon such termination, ERM may, at its option, enter onto the premises and take possession, for the purpose of completing the Work, of all materials and equipment of the Subcontractor. ERM may complete the Work itself or through others, by whatever method ERM deems expedient.

15.3.3 All subcontract or supply agreements which the Subcontractor enters into to carry out the Work shall include a provision that the subcontractor or supplier agrees its agreement may be assigned, upon the termination of the Subcontractor for default, to ERM, an ERM Affiliate, or any other entity defined in Section 16 below. ERM shall have the right, but not the obligation, to accept assignment of any or all such contracts. In case of termination for default, the Subcontractor shall not be entitled to receive any further payment until the Work has been fully completed and accepted by ERM. At such time, if any unpaid balance to Subcontractor, for Work performed that is in accordance with the Subcontract, exceeds the expenses incurred by ERM in completing the Work, together with any additional costs or consequential damages occasioned by the Subcontractor's default, the excess shall be paid to the Subcontractor. If any unpaid balance to Subcontractor is less than the expense ERM incurred in completing the Work, together with any additional costs or consequential damages occasioned by the Subcontractor's default, the Subcontractor shall pay the difference to ERM.

**16. Assignment; Contracting.** Neither Party shall assign the Subcontract or any monies due or to become due to it hereunder without the prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, ERM may, without first obtaining Subcontractor's written consent, assign its rights and obligations hereunder to any direct or indirect parent or subsidiary of ERM, now existing or hereafter created or acquired, or to any other affiliate of ERM (collectively, "ERM Affiliates"), to Client, or to a corporation that is the successor to all or substantially all of ERM's stock or assets. If ERM permits Subcontractor to subcontract any of Subcontractor's obligations hereunder, Subcontractor shall include in its contract with such further subcontractor, a provision whereby such further subcontractor agrees to be bound by the terms of the Subcontract, and Subcontractor shall remain liable for the performance of all Subcontractor obligations hereunder by such subcontractors or lower tier subcontractors.

**17. Independent Contractor.** Subcontractor agrees that it is an independent contractor in the performance of the Work and that neither Subcontractor, nor Subcontractor's employees, subcontractors, lower tier subcontractors, or any other independent contractors are servants, agents, employees, or representatives of ERM. Subcontractor will defend, indemnify and hold harmless ERM and other Indemnified Parties against any claim by any of Subcontractor's

employees, subcontractors, lower tier subcontractors, or any other independent contractors pursuant to the requirements in Section 11.

**18. Notices.** All notices, requests, demands, and other material communications hereunder shall be in writing. Any notice communicated verbally must be confirmed in writing. All notices required hereunder shall be given (i) by personal delivery, (ii) by delivery by overnight courier or delivery service, or (iii) by FAX transmission, in each case properly addressed as set forth in the Work Authorization, or to such other addresses as either Party may designate in accordance herewith. Notices shall be deemed to be given upon such personal delivery or, if couriered or faxed, upon the receipt thereof by the Party concerned.

**19. Confidentiality.**

19.1. Any and all information disclosed in any manner by ERM and/or Client to Subcontractor relating to ERM's and/or Client's business or operations in whatever form, regardless of whether such information relates to the Subcontract, together with all information supplied by Subcontractor to ERM and/or Client based on information provided by ERM and/or Client to Subcontractor ("Information") shall be and shall remain the property of ERM and/or Client. Information: (i) shall not be reproduced or copied, in whole or part, except for use as authorized by ERM to provide the Work to ERM; (ii) shall not be disclosed to any third party; and (iii) shall, together with any full or partial copies thereof, be returned or destroyed upon ERM's request. Subcontractor shall use Information solely for the purpose of providing the Work to ERM.

19.2. Subcontractor will not disclose the Subcontract, in whole or in part, to any third party without ERM's prior written consent. Subcontractor will not make any disclosures concerning ERM, Client, the Subcontract or the Work, to any third party or publicly, without ERM's prior written consent.

19.3. Subcontractor agrees that ERM will suffer irreparable harm if Subcontractor breaches any of its covenants pursuant to this Section 19 and that monetary damages alone would be inadequate to compensate ERM for such breach. Accordingly, Subcontractor agrees that, if Subcontractor breaches or threatens to breach any provision of this Section 19, ERM, in addition to and not in limitation of, any other rights, remedies or damages available at law or in equity, shall be entitled to a temporary restraining order, preliminary injunction and permanent injunction in order to prevent or to restrain any such breach by Subcontractor or Subcontractor's officers, directors, employees, agents, representatives and any and all persons directly or indirectly acting for, on behalf of, or with Subcontractor.

**20. Ownership of Intellectual Property.**

20.1. As between ERM and Subcontractor, ERM shall exclusively own all right, title and interest in and to the copyrights and other intellectual property rights for any and all information, materials, deliverables, work product and other creations developed, produced or made by Subcontractor or its subcontractors in performing the Subcontract. Subcontractor hereby transfers and assigns to ERM, and ERM hereby accepts all right, title and interest in and to all such copyrights and other intellectual property rights. Subcontractor hereby transfers and assigns to ERM, and ERM hereby accepts, all right, title and interest in and to any and all trade secrets, inventions, and other intellectual property developed hereunder. Subcontractor further agrees to give all further assurances and to execute all documents necessary for ERM and/or Client to evidence title and ownership in ERM or Client. If the assignment of rights by ERM to Client in the Prime Contract is more favorable to Client, than the assignment of rights by Subcontractor to ERM in this Section 20.1, then the effect of Section 5.1 is that Subcontractor's assignment of rights to ERM under this Section 20.1 shall be expanded to be consistent with such assignment of rights by ERM in the Prime Contract. The foregoing clarifying sentence does not limit Section 5.1 as applies to other provisions of these General Terms and Conditions which do not contain such a clarifying sentence.

20.2. ERM or Client, as applicable, shall retain sole ownership of all information, design, materials and data provided to Subcontractor.

20.3. Subcontractor agrees that all data and information in hard copy, electronic, or any other format, disclosed, developed or obtained under this Subcontract ("Data"), other than Subcontractor's confidential information, shall be and remain the sole property of ERM. Delivery of the Data to ERM shall be a precondition for Final Payment.

20.3.1 Subcontractor shall promptly deliver all Data to ERM upon ERM's request. Subcontractor shall be fully responsible for the care and protection of the Data until such delivery. Subcontractor may retain one copy of the Data for Subcontractor's archives subject to Subcontractor's continued compliance with the provisions of Section 19.

20.3.2 Subcontractor agrees not to assert, or to allow persons performing under Subcontractor's control, to assert any rights to Data or establish any claim under design, patent or copyright laws. It is expressly agreed that all copyrightable or patentable Data produced pursuant to the Work under the Subcontract has been specifically commissioned by ERM, and that all copyrightable and other proprietary rights therein shall vest solely in ERM.

20.3.3 Subcontractor understands and agrees that all rights under copyright and patent laws under this Subcontract belong to ERM. Subcontractor hereby assigns any and all rights, title and interests under copyright, trademark and patent law to ERM, and agrees to assist ERM in perfecting the same at ERM's expense. Except as otherwise provided in this Subcontract, said documents shall be delivered to ERM without additional cost to ERM.

20.3.4 ERM shall have the unrestricted right to transfer ownership of the Data to Client for Client's use and benefit.

## **21. Insurance.**

21.1. Subcontractor and all lower tier subcontractors, at their expense and at no cost to ERM, shall procure and continuously maintain the following insurance with the following coverage during the term of the Subcontract, with minimum limits (per occurrence/claim and in the aggregate) as set forth in the Work Authorization, and any other insurance required by applicable Laws, with insurers with a rating by A.M. Best at least A-, VII and licensed to do business in all jurisdictions in which Subcontractor operates and/or performs services or Work. If the Prime Contract requires types of insurance coverage and/or endorsements not required hereunder, and/or requires minimum limits of liability greater than the limits required in the Work Authorization, the Subcontractor shall be required to maintain and provide such additional insurance coverage, endorsements and/or limits of liability during the term of this Subcontract without additional cost to ERM or Client, unless such cost is expressly allocated to ERM in the Work Authorization. Subcontractor shall immediately notify ERM if at any time the Subcontractor is unable to obtain, or fails to maintain, any insurance as required by this Subcontract.

21.1.1 Workers' Compensation - Workers' Compensation insurer must be licensed in the jurisdiction in which the Work is being performed and include "Other Provinces and Territories" cover.

21.1.2 Employer's Liability - Employer's Liability Policy must indicate the jurisdiction in which the Work is being performed.

21.1.3 General/Public Liability - Coverage for bodily injury and property damage. General/Public Liability insurance policy must (i) be written on a commercial form; (ii) include Premises/ Operations, and Products/ Completed Operations coverages; and (iii) contain no exclusion for explosion, collapse and underground (XCU) coverage. Subcontractor is responsible for determining the need for and, where needed, provide coverage for Railroad Protective Liability.

21.1.4 Motor Vehicle Liability - Coverage for use of all owned, non-owned, leased and hired vehicles for bodily injury and property damage. Coverage for hired, non-owned vehicles may be provided under the General/Public Liability policy. When transporting hazardous materials, such insurance shall include an endorsement for Sudden and Accidental Pollution Discharge coverage. Alternatively, coverage for transportation of materials may be provided through a separate policy (i.e. contractor's pollution liability policy or a blended public liability/contractor's pollution liability policy).

21.1.5 Excess/Umbrella Liability - Coverage for bodily injury and property damage. Excess/Umbrella policy must (i) specify that the underlying insurance policies include General Liability, Automobile Liability and Employer's Liability; and (ii) be at least as broad as primary underlying policies, on a "follow form" basis.

21.1.6 Professional Liability - Coverage for professional errors or omissions arising out of Subcontractor's Work (if applicable). The policy form shall not exclude coverage for bodily injury and property damage arising from an error or omission.. If coverage is provided on a "claims made" basis, then Subcontractor must maintain coverage or purchase "tail" for a period of no less than three (3) years after the completion of all Work under this Subcontract.

21.1.7 Contractor's Pollution Liability - Coverage for bodily injury, property damage, or environmental damage arising from pollution conditions. When transporting hazardous materials, radioactive and/or waste materials, coverage for transportation of those materials must be included within this policy unless otherwise provided in the General/Public Liability or Motor Vehicle Liability coverage required above.

21.1.8 Property Insurance - Full replacement value of Subcontractor's owned or rented equipment utilized in the completion of the Subcontract. Subcontractor must waive rights of subrogation against ERM and Client for damage to Subcontractor owned or rented equipment. If not insured at full replacement value, then the difference is the responsibility of the Subcontractor.

21.2. In the event that Subcontractor's insurance structure does not conform to the requirements set forth above, then, Subcontractor shall notify ERM if coverage is available as part of another policy.

21.3. Required Endorsements. General/Public Liability and Contractor's Pollution Liability must be endorsed to include Indemnified Parties as additional insured and any other additional insureds required by ERM in the Work Authorization. Additional Insured status on General Liability must be provided with ISO forms CG 20 10 04 13 and

CG 20 37 04 13, or equivalent. General/Public Liability and Contractor's Pollution Liability policies must include a waiver of its insurers' rights of subrogation against Indemnified Parties. Contractor's Pollution Liability policy required hereunder shall be primary and non-contributory and any insurance maintained by Indemnified Parties shall be excess of the Subcontractor's insurance and shall not contribute with it.

21.4. A current Certificate(s) of Insurance, and if requested by ERM, any supplemental documents such as endorsements, must be provided to ERM prior to initiation of any Work, and the provision of such certificate(s) and supplemental documents, if requested, is a condition precedent to Subcontractor's right to be paid under this Subcontract. Such Certificate(s) of Insurance shall reflect all of the above required coverages and endorsements in the Work Authorization, this Section 21 and the Prime Contract. Subcontractor will provide at least thirty (30) days advance notice of cancellation or non-renewal of any of the required policies. ERM reserves the right to require higher limits of insurance for specific exposures.

21.5. Subcontractor's liability shall not be limited to the minimum coverage amounts required, and lack of insurance applicable to a claim or incident shall not exclude Subcontractor's liability. Subcontractor is responsible for all deductibles, self-insured retention, and premium costs.

21.6. Subcontractor shall require that any and all tiers of its subcontractors comply with the insurance requirements set forth above in this Section 21, and in the Work Authorization to the extent applicable to, and commensurate with, the risk associated with their respective scopes of work; and Subcontractor shall be solely responsible and liable for any deficiencies or lack of coverage of its lower tier subcontractors' insurance policies.

## **22. Taxes.**

22.1. Except for any taxes that are expressly and specifically identified in the Work Authorization as the responsibility of ERM and that are then properly itemized and invoiced by Subcontractor to ERM, for the compensation provided under each Work Authorization, Subcontractor accepts and assumes exclusive liability for, and shall defend, indemnify and hold harmless ERM and Indemnified Parties against (a) the payment of all contributions, taxes, duties or premiums which may be payable under the unemployment insurance law of any jurisdiction, measured upon the payroll of Subcontractor's employees engaged in the performance of the Work, (b) all sales, use, property or other taxes of whatever nature levied or assessed against Client or ERM or otherwise arising out of the Subcontract or the Work or any payments hereunder, (c) any taxes on Subcontractor's income as a result of the payments hereunder, and (d) taxes of any kind that any taxing authority may assess or levy in respect of any Subcontractor's suppliers, directors, officers, employees or agents, including but not limited to payroll taxes. The Fees/Schedule of Rates quoted in the Work Authorization includes all such taxes. The Subcontractor waives any and all claims for additional compensation because of any increase in the aforementioned, taxes, contribution, duties or premiums.

22.2. ERM reserves the right, as appropriate, to report, withhold and pay to the tax authorities any tax on account of the Subcontractor's services based on the certifications or written representations provided by the Subcontractor and accepted by ERM, and to deduct such amounts paid by ERM to a tax authority from any amounts owed to Subcontractor under this Subcontract or any other subcontract by either ERM or an ERM Affiliate.

22.3. Subcontractor will cooperate with ERM and provide information reasonably requested by ERM to minimize the amount of applicable taxes and to ensure compliance with applicable tax Laws.

**23. Non-Competition.** Subcontractor agrees that it will not actively participate in any other efforts that are competitive with ERM's efforts related to a project for which Subcontractor is performing Work. The term "actively participate," as used herein, includes the interchange of technical data with ERM competitors. The foregoing restriction does not limit or restrict the rights of the Parties from quoting, offering to sell or selling to others any services that do not relate to a project for which Subcontractor is performing Work. The Subcontract is intended to protect products and services arising from the combined efforts of the Parties on a project, and proprietary information furnished pursuant to the Subcontract.

**24. Risk of Loss.** Subcontractor shall at all times conduct all services under this Subcontract in a manner to avoid the risk of loss, theft, or damage by vandalism, sabotage or any other means to any work, materials, goods, equipment or other property at the Project Site, and Subcontractor is responsible for any such loss, theft or damage. Subcontractor shall continuously inspect all work, materials, goods, equipment, and the Project Site to discover and determine any conditions that might involve such risks and shall be solely responsible for discovery, determination and correction of any such conditions. Subcontractor shall notify ERM of any potential for loss, theft, damage by vandalism, sabotage, or other threat to the Project Site. The use by Subcontractor or any of its subcontractors, with or without permission, of any scaffolding, ladders, tools, equipment or facilities of another shall be at its own risk.

**25. ERM Observation of Subcontractor Work.** Subcontractor understands that ERM personnel have the right (but not the obligation) to be present at the Project Site while Work is performed, for the purpose of observing Subcontractor's operations.

**26. Entry to Project Site.** Subcontractor shall plan and conduct its operations so as not to (i) enter upon lands in their natural state or damage or destroy cultivated and planted areas unless authorized by ERM in writing; (ii) close or obstruct any utility installation, highway, road or other property until any necessary permits have been obtained; or (iii) disrupt or otherwise interfere with the operation of any pipeline, telephone, cable or electric line, ditch or other structure. Subcontractor shall restore roads or other surfaces damaged as a result of construction activities to a condition that is at least equal to that which was found prior to beginning of the Work as determined by ERM. Subcontractor's use of existing roads will be allowed following approval of such use by ERM.

**27. Access to Project Site.** ERM and/or Client shall be responsible for providing Subcontractor with access and usage of the Project Site as necessary to permit performance of the Work. Subcontractor shall promptly provide any evidence of insurance, agreements or information as may be required by third parties to achieve such access. If, after executing a Work Authorization or beginning the Work, Subcontractor subsequently determines that special means of ingress or egress are required, Subcontractor shall construct and remove such means, at Subcontractor's sole cost.

**28. Site Clean-up.** Upon completion of the Work and prior to final payment, Subcontractor shall at its expense satisfactorily dispose of all rubbish, remove all equipment and materials belonging to Subcontractor and return to ERM's warehouse or Project Site storage area all salvageable ERM or Client supplied materials. Subcontractor shall leave its work area in a neat, clean and safe condition. To the extent Subcontractor's work involves disturbance of the Project Site surface, any paving, floors or walls inside buildings or any other structure or cap at or on the Project Site, Subcontractor, at its sole cost and expense, shall restore the Project Site to substantially the same condition as existed prior to the disturbance. If Subcontractor fails to comply with the foregoing, ERM will have the right to accomplish same at Subcontractor's expense.

**29. ERM's Right to Stop the Subcontractor's Work ("Stop Work").** If the Subcontractor (i) fails to correct Work that is not in accordance with the requirements of the Subcontract; (ii) fails to carry out Work in accordance with the Subcontract; including but not limited to safety concerns (iii) fails to complete the Work on schedule; or (iv) is in default of any of its material obligations hereunder, ERM may order the Subcontractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of ERM to stop the Work shall not give rise to a duty on the part of ERM to exercise this right for the benefit of the Subcontractor or any other person or entity. This right shall be in addition to, and not in restriction of, ERM's rights under Section 15 and any other rights available under law. ERM will not be responsible for any fees, costs or expenses incurred by Subcontractor as a result of, or during, such Stop Work.

**30. ERM's Right to Carry Out the Work.** If the Subcontractor defaults or neglects to carry out the Work in accordance with the Subcontract and fails within a three-day period after receipt of written notice from ERM to commence and continue correction of such default or neglect with diligence and promptness, ERM may, without prejudice to other remedies ERM may have, correct such deficiencies or cause them to be corrected. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Subcontractor the reasonable cost of correcting such deficiencies, including ERM's expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay the difference to ERM. No action permitted to be taken by ERM hereunder shall affect any of the other rights or remedies of ERM granted by the Subcontract or by law, or relieve Subcontractor from any consequences or liabilities arising from such deficiencies.

### **31. Miscellaneous.**

31.1. **Applicable Law/Venue/Disputes.** The Subcontract shall be construed and governed in accordance with (i) the internal laws of the jurisdiction specified in the Prime Contract, excluding choice of law rules; or (ii) if no jurisdiction is specified in the Prime Contract, in accordance with the internal laws of the jurisdiction in which ERM is formed (the "Jurisdiction"), excluding choice of law rules. For purposes hereof, the term "Court" shall mean a court of law, an agency or administrative body, or any arbitration or mediation proceeding. If ERM is named as a defendant with respect to any claim arising out of the Work, and ERM in good faith believes that Subcontractor is a necessary or desirable party to a resulting lawsuit or proceeding, Subcontractor hereby consents to the jurisdiction of the Court wherein such lawsuit has been instituted or is pending, regardless of the geographic location of such Court. Subcontractor agrees to appear in such Court and to waive any objection to the Court's jurisdiction over Subcontractor. Subcontractor agrees to cooperate with ERM in defending any such claim, including, without limitation, participating in meetings relating to such defense. Subcontractor further agrees to cooperate with the enforcement of any judgment rendered by a Court. Except as otherwise provided in this Section 31.1, ERM and Subcontractor agree to submit any dispute between ERM and Subcontractor to the Courts in and for the Jurisdiction, as selected by ERM at its sole option. In the event of any dispute, Subcontractor, for itself and its subcontractors, as permitted herein, and materialmen, agrees that it will continue to prosecute the Work diligently to meet the performance schedule and the time for completion.

31.2. **Entire Agreement.** The Subcontract constitutes the entire agreement between ERM and Subcontractor, and supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written

with respect to the subject matter hereof. The Subcontract may not be modified except in writing executed by the Parties. Without limiting the foregoing, no terms contained in any proposal, invoice or other business form communicated by Subcontractor to ERM, whether prior to or after execution of the Work Authorization, shall be of any effect, and no such terms shall modify or supplement the Subcontract.

31.3. Construction. For the purposes of these General Terms and Conditions, words in the singular also include the plural and vice versa. The captions of sections are for convenience only and do not affect the meaning or construction of these General Terms and Conditions.

31.4. Severability. If any provision contained herein is held to be unenforceable by a court of law or equity, these General Terms and Conditions shall be construed as if such provision did not exist and the unenforceability of such provision shall not be held to render any other provision of these General Terms and Conditions unenforceable.

31.5. No Presumptions. These General Terms and Conditions shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.

31.6. Waiver. Any waiver by either party of any provisions or conditions of the Subcontract shall not be construed or deemed to be a waiver or modification of any other provisions or conditions of the Subcontract, nor a waiver of a subsequent breach of the same provision or condition unless such waiver be expressed in writing by the party to be bound.

31.7. Records. Subcontractor shall keep complete and accurate records concerning the Work. For a period not to exceed five (5) years from the termination or expiration of this Subcontract, ERM shall have the right to examine and audit all of Subcontractor's billings and all of Subcontractor's backup and support data for those billings. Upon ERM's request, Subcontractor shall make such data and backup available for ERM's auditor to examine. All payments made by ERM are subject to revaluation and refund or future withholding of billing payments conditioned on the results of the audit.

31.8. Third Party Beneficiary. Nothing in the Subcontract shall be construed as creating third-party beneficiary rights in any person or entity, unless specifically provided otherwise, but the foregoing shall not limit the right of Client, or any other party allowed by ERM, to use and rely on Subcontractor's work product. Subcontractor specifically agrees and acknowledges that it is without privity of contract to Client and that by entering into the Subcontract, the Subcontractor neither acquires nor intends to acquire any rights against the Client pursuant to a third-party beneficiary theory or any other theory.

31.9. Survival. Provisions which by their nature should reasonably survive the termination or expiration of this Subcontract shall so survive, including without limitation Sections 10, 11, 15, 19, 20, 21, 22, 31.1, and 31.7 of these General Terms and Conditions and any similar terms in applicable Special Terms and Conditions.

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ERM Legal Department

20 November 2020