**JANUS INTERNATIONAL GROUP**

**FACILITATE™ WORK ORDER**

**TERMS AND CONDITIONS**

These terms and conditions (the “Agreement”) are applicable by and between Janus International Group, LLC, and its affiliates, (collectively, “Janus” or “Contractor”) and the entity or person listed on the Work Order (“Subcontractor”). By commencing or otherwise beginning performance of the Work specified in a Work Order (hereinafter defined), Subcontractor understands and acknowledges its acceptance of the terms and conditions of this Agreement and agrees to be bound by same.

**A. GENERAL:**

1. This Agreement sets forth the fundamental terms and conditions regarding any and all Work to be performed by Subcontractor for Contractor as set forth on an applicable Work Order. The exact details of a particular project or job shall be more specifically defined in a separate Work Order (each a “Work Order”). The terms and conditions of this Agreement shall control over any additional or conflicting terms of any Work Order.
2. Contractor hereby engages Subcontractor, and Subcontractor hereby accepts such engagement, to perform certain services as Contractor has set forth on the Work Order for the performance of certain services, installation, and/or facilities maintenance work that is specified by a Work Order issued by Contractor (the “Work”). This Agreement is hereby incorporated into and made a part of each Work Order. ***It is the express intention of the parties that Subcontractor, in the performance of the Work to be provided under this Agreement, is an independent contractor and not an employee, agent, joint venturer, or partner, of Contractor. Nothing in this Agreement shall be interpreted as creating the relationship of employer and employee between Contractor and Subcontractor or between Contractor and any employee or agent of Subcontractor.*** Subcontractor shall retain the right to perform services for others during the term of this Agreement. Further, both parties acknowledge that Subcontractor is not an employee for state or federal tax or state labor purposes, and, accordingly, Subcontractor is responsible for paying all required state and federal taxes (employment or otherwise) as well as any worker’s compensation or unemployment insurance.
3. Subcontractor shall furnish all certificates of insurance as required by this Agreement and all certificates of insurance must be submitted prior to performing any Work.
4. Subcontractor agrees to diligently pursue its portion of the Work, and to meet the requirements set forth in the applicable Work Order. In the event the Subcontractor delays the progress of the Work, Subcontractor shall bear all cost of overtime, expediting, and all special freight or other charges required to bring its progress to the level required. Subcontractor may also be subject to damages or claims by Contractor, the Owner of the facility, or other subcontractors, caused by Subcontractor’s failure to comply with the Work Order. Failure of compliance may result in implementation of Section B7 (“Default and Remedies”) of the Terms and Conditions herein below.
5. General work hours may be suggested by the Contractor, but Subcontractor shall be responsible for coordinating Work with Contractor and other subcontractors as set forth herein.
6. Subcontractor shall cooperate fully with the general instructions and general directions of the Contractor and, if applicable, shall coordinate its Work with the work of other subcontractors. Subcontractor shall be responsible for determining the specific manner of performing the Work subject to the requirements of the applicable Work Order.
7. All Work shall be performed in a workmanlike and professional manner, with the Subcontractor taking great care and best efforts not to damage any work already in place.
8. The Subcontractor shall be responsible for clean-up of its own debris on a daily basis. If, in the opinion of the Contractor, clean-up is not being performed satisfactorily, the Contractor, after having notified the Subcontractor of same, shall have the Work performed by others, and all charges incurred will be for the account of the Subcontractor, and shall be deducted from payments due to the Subcontractor.
9. The Subcontractor shall be aware of, and shall perform its Work in strict compliance with, all local, state, and federal safety requirements and regulations including, but not limited to, all applicable OSHA rules and regulations. Insofar as they do not conflict with the above, the Subcontractor shall also comply with the Owner’s or the General Contractor’s safety regulations. Any OSHA or other governmental fines, or General Contractor claims resulting from Subcontractor’s acts or omissions, will be the responsibility of Subcontractor. Subcontractor understands and agrees that there can and shall be no drinking of alcoholic beverages on any job site, and no illegal or inappropriate drug use either on a work site or while working on any project for Contractor.
10. The Subcontractor shall comply with the code requirements of any governmental or regulatory body having jurisdiction over the Work covered herein. Any discrepancy between the code requirements and the drawings or specifications shall be brought to the attention of the Contractor by Subcontractor.
11. The Subcontractor shall be responsible for storing and protection of its materials and any Parts (hereinafter defined).
12. Payments shall be made in accordance with Section B8 (“Payment”) of the Terms and Conditions herein.
13. **Subcontractor must reference the specific Work Order number in its invoices and in accordance with this Agreement.**
14. The Subcontractor shall execute IRS document Form W-9 and deliver same to Contractor. Payment will not be made without this document or any other required documents on file, including without limitation, any and all insurance documentation specified in Sections 4 and 5.
15. Extra work or change orders must be approved in writing by Contractor prior to execution of any Work. Work not timely and appropriately approved shall not be requested nor considered for compensation.
16. From time to time Contractor may request certain information related to the Subcontractor’s company which may include, without limitation, Subcontractor financials, number of employees and/or vehicles, office locations, insurance information, and licenses. In the event Subcontractor fails to timely provide information requested by Contractor, Contractor reserves the right to terminate the Agreement and any Work Order.

**B. TERMS AND CONDITIONS:**

**1.** **PERFORMANCE:** Subcontractor acknowledges that TIME IS OF THE ESSENCE with respect to Contractor’s completion of the Work, which is substantially dependent upon Subcontractor’s performance of this Agreement and the applicable Work Order. Time, therefore, is of the essence in this Agreement and with respect to any applicable Work Order. Subcontractor shall expend such time and energy as Subcontractor determines to be necessary in order to provide the Work: (i) to the best of Subcontractor’s ability; (ii) in a diligent, careful, thorough and professional manner; (iii) consistent with good business practices; (iv) in compliance with all laws, rules and regulations, federal, state and municipal, which are now or may become applicable to the Work, including without limitation, OSHA regulations; and Subcontractor shall be responsible for all costs and penalties and shall defend, indemnify and hold harmless Contractor, its subsidiaries, affiliates, and their divisions and successors, agents, servants and employees against claims resulting from Subcontractor’s failure to so comply; (v) in strict compliance with this Agreement and the specifications contained in the Work Order; and (vi) to the reasonable satisfaction of Contractor. Subcontractor shall turn the Work over to the Contractor in good condition and free and clear of all claims and liens. Subcontractor shall, at its expense, indemnify Contractor and defend all suits, and pay all claims arising from its actions and omissions or those of its vendors or any of its lower tiered subcontractors in its performance of this Agreement. Subcontractor covenants, agrees, and warrants that it shall not employ any labor that will interfere with labor harmony at the job site or with the introduction and storage of materials and execution of Work by other subcontractors. If Subcontractor breaches this covenant and such breach causes a stoppage or slowdown of Work at the job site, Subcontractor shall be liable for damages suffered by Contractor caused by such delay in completing the project. Subcontractor shall comply with all laws, ordinances, and regulations relating to the manner of doing the Work or to the supplying of material, including, without limitation, laws, ordinances, rules, regulations and orders for the safety of persons and property, and shall provide safe working conditions for his employees and other persons at all times. If Subcontractor discovers any errors, omissions, or discrepancies in the drawings, specifications, or this Agreement, Subcontractor shall immediately notify Contractor in writing. Any Work affected by such discoveries which is performed by Subcontractor prior to Contractor notification and authorization shall solely be at Subcontractor’s risk. It is understood that other subcontractors, Contractor, or Owner may be working in the same area as the Work to be performed under this Agreement, and Subcontractor’s Work may be temporarily affected due to performance of work or Work by others. Subcontractor agrees to fully cooperate with others to assure an expeditious completion of the interfaces. Subcontractor expressly understands and agrees that his only remedy for delays in the Work shall be for an extension of time for the number of days by which he has been delayed, as determined by Contractor and that it shall not be entitled to any recovery for losses, expenses, or damages relating to such delays, however caused: provided, however, that no allowance for additional time shall be made for any cause unless request for an extension is presented in writing to Contractor within then forty-eight (48) hours after occurrence of the event giving rise to the delay. Any claim not so presented within forty-eight (48) hours shall be deemed waived by the Subcontractor and shall not be considered. If Subcontractor’s Work depends on the proper execution of Work by others, Subcontractor shall inspect and report in writing to the Contractor any defects in such Work prior to the execution of his Work. Failure to inspect and report constitutes acceptance of such Work by Subcontractor. Subcontractor shall protect his finished Work against damage by other trades and shall be liable for damage caused by him to the Work of others. Subcontractor shall pay the cost of replacement or repair to the Work damaged by him or occasioned by the correction of his defective Work or to the Work of other trades damaged by him or occasioned by the correction of his defective Work. Should Subcontractor fail to do so, Contractor may, at its option, correct such defective Work and deduct the cost thereof from any amounts owed to Subcontractor and if the cost of such correction exceeds the unpaid Work Order price, Subcontractor shall pay to Contractor such excess cost.

**2. CHANGES IN THE WORK:** Whenever the Contractor requests extra work verbally or in writing, any claim for compensation for such extra work must be presented by the Subcontractor to the Contractor in writing within forty-eight (48) hours of such request. No dispute as to adjustment in the Work Order price due to extra work shall excuse Subcontractor from proceeding within the original scope of Work or extra work. If Contractor requests Subcontractor to proceed with extra work, the scope and nature of which is reasonably susceptible to a lump sum quotation, Subcontractor shall provide a quotation for said extra work within forty-eight (48) hours of such request. Subcontractor shall furnish a complete breakdown itemized in sufficient detail to permit an analysis of all labor, material, and equipment for Work added or deleted at the direction of the Contractor and timely claimed in writing by Subcontractor. If applicable, Subcontractor must include any request for a time extension and the justifications therefor. It shall be a condition precedent to Subcontractor’s recovery of any sum or damages for extra, additional, different, or changed Work of any type or extension of time, whether requested or caused by Contractor or others, that Subcontractor shall have made a specific written claim for such Work, extension, sums, or damages within forty-eight (48) hours of the request or event giving rise to such extra, additional, different, or changed Work or extension of time. Claims for any such Work, extension, sums, or damages received after forty-eight (48) hours are waived and will not be considered.

**3. GOVERNMENTAL REQUIREMENTS:**  Subcontractor agrees to strictly comply with the requirements, indications, regulations, orders, permissions, and restrictions issued by the applicable governmental authorities including but not limited to the immigration laws that apply in each state wherein Work is to be performed.

**4.** **INDEMNIFICATION AND DUTY TO DEFEND; INSURANCE:** To the fullest extent permitted by applicable law, Subcontractor specifically obligates itself to protect, immediately defend, indemnify and hold Contractor and their respective officers, directors, employees, agents, Affiliates and representatives (hereinafter “Indemnitees”) harmless against claims, damages, liability, losses, demands, causes of action, judgments, costs, expenses, including any fees of accountants, attorneys, experts, or other professionals, or investigation expenses (hereinafter “Losses”) arising out of or in connection with the Subcontractor’s operations and the Work. Subcontractor’s obligations include, but are not limited to, the following: (i) Losses for any alleged or actual violation or infringement by Subcontractor (or Subcontractor’s employees or subcontractors or consultants or vendors of any tier) of any law, statute, codes, safety or occupational health orders, rules, regulations, standards, orders or any patent or patent right; (ii) Losses resulting from injury to or death of any person (including Subcontractor’s employees) or damage to property of any kind (including economic loss), including the Subcontractor’s Work or the work of others on the project, which injury, death or damage arises out of the performance of Subcontractor’s Work; (iii) Losses arising from: (1) construction liens, mechanics’ liens, or other materialman’s lien of any sort, stop notice claims and payment bond claims made by any sub-subcontractor, suppliers, laborers, rental companies, or the like, and (2) claims and liens for labor taxes, materials, appliances, equipment, and supplies whatsoever, including any costs, attorneys’ fees, and incidental damage resulting therefrom; and for failure by Subcontractor or any party acting on Subcontractor’s behalf to comply with all laws, ordinances and regulations of all governmental authorities in any manner relating to the Work; and (iv) Losses arising out of any breach of or failure or alleged failure to comply with the terms of this Agreement or any Work Order.

Subcontractor’s indemnity and hold harmless obligations hereunder shall apply to any acts, omissions, willful misconduct, negligent conduct, other fault, or liability without fault of any person or entity for whom Subcontractor is or may be responsible; however, Subcontractor shall not be required to indemnify an Indemnitee against claims arising from Indemnitee’s own active negligence or willful misconduct. Subcontractor acknowledges the separate and independent duty to defend set forth in this paragraph, and shall, regardless of whether any indemnification obligations later arise, at its own cost, expense and risk, and immediately upon tender, defend the Indemnitees in any and all claims, demands, actions, lien actions, suits or other legal, arbitral, administrative or other proceedings which may be brought against Indemnitees. Subcontractor may appoint counsel of its choice; however, such counsel shall be (i) experienced and capable of effectively handling the subject matter assigned, and (ii) free of conflicts of interests, biases and prejudices against the Indemnitees. Alternatively, Subcontractor may elect to pay, within 30 days of receipt of an invoice from Contractor its allocable share of Contractor’s defense fees and costs during the pendency of a claim. If Subcontractor fails to timely and adequately perform its obligations, Contractor shall have the right to pursue a claim against the Subcontractor for any resulting compensatory damages, interest on defense and indemnity costs from the date incurred, consequential damages, and reasonable attorneys’ fees incurred to recover these amounts.

The foregoing indemnity and defense obligations are not limited by the amount of any available insurance and are in addition to any express or implied indemnity or contribution rights available to any of the Indemnitees at law or in equity. All Work done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Subcontractor exclusively until the completed Work is accepted by Owner.

With respect to claims against an Indemnitee, asserted by an employee of Subcontractor, by an employee of one of Subcontractor’s subcontractors, by an employee of anyone directly or indirectly employed by them, or by an employee of anyone for whose acts they may be liable, Subcontractor’s indemnity obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor or Subcontractor’s subcontractors under worker’s compensation acts, disability acts, or other employee benefit acts.

All indemnity obligations under this Agreement shall apply to claims arising both before and after completion of the Work under the Agreement documents and any applicable Work Order and to claims arising both before and after the termination of any Work Order or this Agreement. The indemnity obligations set forth in this Section or in any other provision of the Agreement shall not be construed to negate, abridge, or reduce any other rights of indemnity accorded by law or equity to the Indemnitees.

Subcontractor shall provide and maintain at Subcontractor’s expense, until the completion and final acceptance of the Work, the following insurance protection with companies satisfactory to Contractor:

* 1. **Workers’ Compensation** with limits that are at least equal to the statutorily required minimums of the state in which the Work is to be performed. If the Work will involve, in whole or in part, Work or operations on the navigable waters of the United States or on a flagged vessel, then Contractor shall obtain coverage pursuant to the Jones Act and/or the Longshoremen’s and Harbor Worker’s Compensation Act. If Subcontractor leases one or more employees through the use of a payroll, employee management or other company, then Subcontractor must procure workers’ compensation insurance written on an “if any” policy form, including an endorsement providing coverage for alternate employer/leased employee liability. Such insurance shall be in addition to the workers’ compensation coverage provided to the leased employee by the payroll, employee management or other company. If applicable, coverage shall contain an “Other States Endorsement.” Self-insurance is not acceptable. **Texas exception**: in the event Subcontractor is an employer validly organized and exiting under the laws of the state of Texas, Contractor understands and acknowledges that said Texas Subcontractor is not required to carry workers’ compensation insurance coverage pursuant to Tex. Lab. Code Ann. § 406.002. In this case, if Subcontractor validly opts out of workers’ compensation coverage, Subcontractor shall promptly report its non-coverage status prior to the commencement of any Work set forth in any applicable Work Order and any work-related injuries or occupational diseases to the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) (Tex. Lab. Code Ann. § 406.004; 28 Tex. Admin. Code § 160.2). In the event Subcontractor hires any employees during the Term, Subcontractor shall provide sufficient evidence to Contractor of either: (i) workers’ compensation insurance; or (ii) a Texas Non-Subscriber Benefit Plan with sufficient insurance to provide benefits set forth in the benefit plan. Subcontractor understands and acknowledges that a Texas employer who opts out of workers' compensation coverage can still be liable for work-related injuries or illnesses and that Subcontractor’s foregoing obligations are a condition precedent to performance and subsequent payment under this Agreement and any applicable Work Order.
  2. **Commercial General Liability.** This insurance shall be provided by a current ISO occurrence form policy, including, without limitation, coverage for damages because of bodily injury, property damage and personal and advertising injury and for the products-completed operations hazard. This insurance shall have combined Single Limits Bodily Injury and Property Damage of $1,000,000 each occurrence: $2,000,000.00 general aggregate; and $2,000,000.00 products/completed operations aggregate. This insurance shall be maintained from commencement of the Work until not less than 10 years after substantial completion and acceptance of the Work and/or sale of any products, or to the applicable Statute of Repose in the jurisdiction where the Work is to be performed, whichever is longer.
  3. **Automobile Liability Insurance.** This insurance shall be on a current ISO form and apply on an “any auto” basis, including all vehicles used in connection with the Work, and provide annual limits of at least $1,000,000 per occurrence - bodily injury and property damage combined including uninsured and underinsured motorist coverage and medical payment protection. This coverage shall include, without limitation, loading and unloading. Notwithstanding the foregoing, in special circumstances and in Contractor’s sole discretion, Contractor may accept a personal automobile liability insurance policy with limits no less than $500,000.00, combined single limit for each occurrence involving personal injuries and/or property damage for all vehicles used in connection with the Work in lieu of the commercial automobile liability insurance policy specified in this Section 4.3.
  4. **Umbrella and Excess Liability**. This insurance shall provide annual limits of at least $1,000,000 in the form of an umbrella or excess liability policy. This insurance shall follow form to the Commercial General Liability and Automobile Liability policies and “drop down” for defense and indemnity in the event of exhaustion of the underlying insurance. The limits of liability required in this Section may be satisfied with a combination of general liability, umbrella and/or excess policies of insurance where applicable, provided that such policies comply with all of the provisions hereof.
  5. **State Specific Insurance Requirements.** In the event Subcontractor is to perform Work in a state where statutorily required minimums exceed the limits and insurance requirements herein, Subcontractor shall, at its own expense, maintain and carry in full force and effect the insurance types and amounts of coverage that are at least equal to the statutorily required minimums of the state in which the Work is to be performed. Subcontractor understands and acknowledges that it, and not the Contractor, is expressly obligated to ensure compliance with any and all state specific insurance requirements that may exist (in addition to the insurance limits and requirements outlined in this Section 4 and Section 5). Subcontractor shall to the fullest extent permitted by law, indemnify, defend, and hold harmless Contractor for any breach of this Section 4 and Section 5. Subcontractor understands and acknowledges that Subcontractor’s insurance obligations are an essential condition of this Agreement.

1. **GENERAL INSURANCE REQUIREMENTS.** 
   1. **Insurer Requirements**. Each insurer providing insurance coverage as required by this Agreement shall be an insurer authorized to issue such coverages in the state in which the Work is to be performed and shall have an A.M. Best rating of “A-VIII” or better. Contractor, in its discretion, shall have the right to reject any insurance company selected by Subcontractor.
   2. **Additional Insureds**. All insurance required by this Agreement (excluding only Workers’ Compensation) shall name the following parties as additional insureds: Contractor and its parents, members, affiliates, lender, directors, officers, representatives, agents, and employees, all parties required to be indemnified under this Agreement, and all other parties reasonably requested by Contractor (hereinafter collectively the “Additional Insureds”). All policies (including primary, excess, and/or umbrella) shall state that the insurance provided to the Additional Insureds is primary and non-contributory to any other insurance maintained by or available to the Additional Insureds. With respect to the Commercial General Liability insurance policy required herein, additional insured status must be provided on ISO forms CG 20 10 04 13 or CG 20 38 04 13 and CG 20 37 04 13.
   3. **Scope of Coverage and Limits of Insurance**. The coverage provided to the Additional Insureds must be at least as broad as that provided to the first named insured on each policy. In the event that any policy provided in compliance with this Agreement states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the parties agree that nothing in this Agreement is intended to restrict or limit the breadth of such coverage. Furthermore, the limits of insurance provided by Subcontractor shall be the greater of the limits maintained in the normal course of Subcontractor’s business or the minimum limits specified in this Agreement. The limits of insurance stated above for each type of insurance are minimum limits only. In the event Subcontractor’s policy provides greater limits, then the Additional Insureds shall be entitled to, or to share in, the full limits of such policy, and this Agreement shall be deemed to require such full limits.
   4. **Severability of Interests (Cross Liability).** No insurance policy required by this Agreement shall contain a cross liability exclusion which restricts or bars coverage for a claim brought by an additional insured against a named insured.
   5. **Waiver of Subrogation**. To the fullest extent permitted by law, all insurance Subcontractor furnishes in compliance with this Agreement shall include a waiver of subrogation in favor of the Additional Insureds.
   6. **Certificates of Insurance**. Prior to the commencement of any Work, and prior to any personnel coming on the Project site, Subcontractor shall furnish the following: (a) a current Certificate of Insurance (“COI”) indicating the Project and evidencing all coverages required by this Agreement; (b) a copy of the provisions in the relevant policy(ies) or endorsement(s) adding the parties required to be added as additional insureds; (c) a copy of the provisions in the policies or endorsements providing that the insurance provided to the Additional Insureds is primary and non-contributory and shall not seek contribution for any coverage carried by the Additional Insureds; and (d) a copy of the policy provisions or endorsement providing a waiver of subrogation in favor of the Additional Insureds. Any renewals, changes in coverage, or replacements in coverage shall be similarly documented and forwarded at least ten (10) days prior to expiration. Upon request, Subcontractor shall also provide Contractor with a certified copy of any policy providing coverage required herein. Failure to provide an acceptable and current certificate of insurance and additional insured endorsement in compliance with directions as might be provided by Contractor, will be cause for Contractor to retain any and all amounts owed to Subcontractor until an acceptable and current certificate of insurance and applicable additional insured endorsements are received by Contractor. The amount of such required insurance coverage under this Section shall not limit Subcontractor’s obligations under this Agreement. Subcontractor represents that this Agreement is covered by the contractual liability coverage provision of the Subcontractor’s liability policy.
   7. **Notice of Cancellation**. All policies required under this Agreement shall contain endorsements that confirm that said insurance policies shall not be cancelled, not renewed, or materially changed except upon thirty (30) days prior written notice to Contractor.
   8. **Contractor’s Right to Procure Insurance**. In the event of a failure of Subcontractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, Contractor shall have the right (but not the obligation) to procure such insurance on behalf of Subcontractor, and Subcontractor shall furnish all necessary information in connection with Contractor’s procurement and either pay the cost thereof to Contractor immediately upon presentation of a bill therefor, or have the cost thereof deducted from any payment otherwise due to Subcontractor under this Agreement at Contractor’s option.
   9. **Sub-subcontractors.** Before permitting any sub-subcontractor to perform Work under a subcontract relative to the Project, the Subcontractor shall require, by written contract, that such subcontractors maintain insurance in like form and amounts to that required by this Agreement. Subcontractor shall be responsible to ensure that each of its sub-subcontractors maintains insurance in like form and amount and shall provide evidence of same to Contractor if requested.

**6. ASSUMPTION OF RISK AND HOLD HARMLESS:**

(a) Subcontractor is fully aware of the risks and hazards connected with being on the premises and participating in Work to be completed and is fully aware that there may be risks and hazards unknown to Subcontractor connected with being on the premises and participating in the Work performed for Contractor. Subcontractor hereby elects to voluntarily participate in the Work to be completed, to enter upon the premises where the Work is to be performed and engage in activities knowing that conditions may be hazardous or dangerous to Subcontractor and Subcontractor’s property. Subcontractor voluntarily assumes full responsibility, to the fullest extent permitted by law, for any and all risks of loss, property damage or personal injury, including death, that may be sustained by Subcontractor and any and all of Subcontractor’s agents, employees, sub-subcontractors and anyone else acting for, under, or on behalf of Subcontractor, or any loss or damage to property owned by Subcontractor or any of the above listed persons or entities, as a result of being a participant in the Work to be completed, except to the extent that same are the sole and exclusive result of the acts or omissions of Contractor. Subcontractor further hereby agrees to the fullest extent permitted by law, to indemnify, defend, and hold Contractor harmless from any Losses Contractor may incur as a result of the Work to be performed under this Agreement and any Work Order issued to Subcontractor, whether performed by or on behalf of Subcontractor.

(b) LIMITATION OF LIABILITY. IN NO EVENT SHALL CONTRACTOR OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS SUBCONTRACT TO SUBCONTRACTOR OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS SUBCONTRACT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT CONTRACTOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

**7. DEFAULT AND REMEDIES:**

(a) If, at any time: (i) Subcontractor fails to prosecute and complete the Work in accordance with the applicable Work Order, or as herein provided, or as directed by Contractor, or (ii) fails to diligently and continuously perform its Work, or, (iii) if, in the sole opinion of Contractor, the Work of Subcontractor cannot be completed in the time period required, or (iv) if Contractor is notified of Subcontractor’s failure to pay for any material or labor used on any project, or (v) in the event of a strike or stoppage or Work resulting from a dispute involving or affecting the labor employed by Subcontractor or its sub-contractors, or (vi) if Subcontractor fails to perform any of the requirements of this Agreement (including without limitation, Subcontractor’s obligations set forth in Section 4 or 5), then such event shall constitute a default hereunder, and Contractor shall notify Subcontractor to correct such default and shall specify in such notice the action to be taken and a reasonable date by which the default shall be corrected.

(b) If a default occurs and is not corrected on or before the date specified in the notice to the Subcontractor, Contractor shall be entitled to exercise any or all of the following remedies:

* Contractor may immediately take any action necessary to correct such default, including without limitation the right to provide labor, overtime, and materials, and may deduct all of the cost of correcting such default from any payment due or to become due to Subcontractor or recover such cost from Subcontractor if no sums are due or become due to Subcontractor.
* The Contractor may terminate this Agreement and any Work Order, take possession of Subcontractor’s materials, tools, and equipment used in performance with the Work, and employ another subcontractor or use the employees of Contractor or others to finish the remaining Work to be performed hereunder. Contractor may deduct all of the costs of completing the remaining Work from the unpaid Work Order price; and if the cost of completing the remaining Work exceeds the unpaid Work Order price, Subcontractor shall pay Contractor such excess cost, including, without limitation, overhead, and attorneys’ fees.

(c) The Contractor may exercise any remedy at law or in equity available as a result of Subcontractor’s default or non-performance under this Agreement or any Work Order. Contractor, in any such event, may also refrain from making any further payments to Subcontractor until the entire project subject to the respective Work Order is fully finished and accepted by Owner at which time, if the unpaid balance of the amount to be paid under an Work Order shall exceed the sum of the expense incurred by the Contractor in finishing the Work and the damage sustained by Contractor as a result of Subcontractor’s default, then such excess shall be paid by Contractor to Subcontractor; but, if the sum of such expenses and damages shall exceed such unpaid balance, Subcontractor shall promptly pay the difference to the Contractor. Upon any default, Subcontractor shall pay to Contractor its attorneys’ fees and court costs incurred in enforcing this Agreement or seeking any remedies hereunder. Subcontractor shall pay all such fees and costs, whether or not suit is filed and in connection with any appeal and in connection with any bankruptcy or other insolvency proceeding.

(d) If Contractor does not terminate Subcontractor’s right to proceed, Subcontractor shall continue with the Work.

(e) If Owner is damaged by reason of any breach by Subcontractor of this Agreement or any Work Order, then Subcontractor shall pay Owner such damages, together with all costs of collection including court costs and attorneys’ fees.

(f) Subcontractor hereby knowingly and voluntarily waives all claims for consequential damages due to delays, disruptions, constructive acceleration of Work and similar economic losses and agrees that Subcontractor’s sole and exclusive remedy for any such claims shall be an extension of the of the contract time provided that Subcontractor makes a written claim for such extension within ten (10) days of the event giving rise to the claim.

**8. PAYMENT:** In consideration of the Subcontractor’s full and faithful performance of this Agreement and completion of the Work, Contractor shall pay to Subcontractor the amount properly invoiced by the Subcontractor, up to the agreed-upon not to-exceed amount set forth in a Work Order within sixty (60) days of the date of receipt of a properly verified invoice and any required documentation. In consideration of the Work awarded, Contractor reserves the right to charge a service fee to be applied to each approved Work Order. Subcontractor must submit an acceptable invoice and supporting documentation to Contractor within three (3) business days from completion of the Work. In the event Subcontractor fails to submit an acceptable invoice and supporting documentation to Contractor within thirty (30) days of completing the Work, Contractor shall not have any duty to pay any amounts owed for such Work. Subcontractor shall not receive or request any payment directly from any Contractor customer (e.g. the Owner or General Contractor). Subcontractor shall be responsible for the payment of any and all federal, state and local taxes. Subcontractor shall, as often as requested, furnish such information, evidence and substantiation as Contractor may require with respect to the performance and completion of the Work Order. Contractor reserves the right to withhold and retain from any and all amounts payable to Subcontractor hereunder, without limiting its other rights and remedies, an amount sufficient: (a) to defend, satisfy and discharge any asserted claim that Subcontractor has failed to make payment for labor, work, materials, equipment, taxes or other items, (b) that Subcontractor has caused damage to the property of any Customer; (c) to reimburse Contractor for any costs incurred as a result of any act or omission by Subcontractor; and/or (d) to protect Contractor from the possible consequences of any other breach or default by Subcontractor hereunder. Further, Subcontractor may be subject to other withholding, retentions, set-off, and financial penalties related to Subcontractor’s poor performance or nonperformance, which poor or nonperformance shall be communicated by Contractor to Subcontractor from time to time as necessary. Subcontractor shall neither attach nor permit the attachment of any liens upon the property of any Customer as a result of Subcontractor’s performance of the Work. If payment is not made, Subcontractor’s sole and exclusive remedy shall be limited to commencing a dispute as set forth in section 13 of this Agreement.

Subcontractor shall defend and discharge any liens or claims arising from its performance or failure to perform under this Agreement and shall indemnify and hold the Contractor and the Owner harmless from any Losses relating to or resulting from mechanics’ liens, equitable liens, or payment bond claims arising by, through or under Subcontractor. Subcontractor shall make payment to sub-subcontractors and suppliers in an amount equal to the percentage of completion allowed to the Subcontractor on account of his Work. Sums paid to the Subcontractor for the performance of this Agreement shall be used for labor, services, and material provided under this Agreement, and shall not be used to satisfy the obligations of subcontractor on other contracts. Subcontractor further agrees that its full performance of this Agreement shall not constitute an exception to the conditions set forth in this Section. Subcontractor agrees that this provision shall also constitute a condition precedent to any claim against any payment bond in effect on the project. Notwithstanding anything to the contrary in this Agreement, and without prejudice to any other right or remedy it has or may have, Contractor may, without notice to Subcontractor, set off or recoup any liability it owes to Subcontractor against any liability for which Contractor determines Subcontractor is liable to Contractor, whether either liability is matured or unmatured, liquidated or unliquidated or arises under this Agreement (including any applicable Work Order issued hereunder).

**9. REPRESENTATIONS AND WARRANTIES:**

(a) Subcontractor represents and warrants to Contractor that all materials and equipment furnished under the Agreement will be new unless otherwise specified, and that all Work shall be of good quality, free from faults and defects, and in conformance with the Agreement. All Work not so conforming to these standards may be considered defective and rejected. If required by the Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Subcontractor shall warrant all materials and workmanship furnished or performed hereunder to be free of defects for a period of one (1) year from date of acceptance by Owner of the entire project listed in the applicable Work Order unless otherwise specified herein, and shall, at Subcontractor’s expense, promptly replace, repair, or correct any such defective materials or workmanship appearing within warranty period as set forth herein. Subcontractor shall submit and assign all factory warranties on equipment and materials installed by Subcontractor, and, at the option of Contractor, shall initiate an assignment to Contractor and/or assigns, a service agreement with a local service agency covering all equipment, workmanship, and materials so installed. The Warranty provided in this Section and elsewhere in this Agreement shall be in addition to and not in limitation of any other warranty or remedy required by law or by this Agreement.

(b) Subcontractor represents and warrants that prior to the commencement of any Work under this Agreement and any applicable Work Order, Subcontractor has read, acknowledged, and fully understood the applicable material installation instructions associated with the materials specified for installation in any applicable Work Order. By proceeding with any installation of the materials, Subcontractor (or Subcontractor’s employees or subcontractors or consultants or vendors of any tier) acknowledge that they have fully read and understood the installation instructions and the relevant disclaimers and warnings listed at: [**www.janusintl.com/about/resources**](http://www.janusintl.com/about/resources)**.** Access to the installation instructions may be presented in the form of a Quick Response code (“QR Code”) affixed to certain materials delivered pursuant to the applicable Work Order. If Subcontractor is unable to access the applicable installation instructions via the QR Code or via the URL listed herein, Subcontractor can access the respective installation instructions by contacting Contractor’s support line at 770-562-2850 for assistance. Subcontractor is expressly responsible for any failure in adhering to any applicable installation instructions, in whole or in part, and agrees to indemnify, defend, and hold harmless Contractor for any Losses arising in connection with same.

(c) Subcontractor further represents and warrants to Contractor that: (a) it has the right to enter into this Agreement, to grant the rights granted herein, and to perform fully all of its obligations in this Agreement; (b) its entering into this Agreement with Contractor and its performance of the Work does not and will not conflict with or result in any breach or default under any other agreement to which it is subject; (c) it has the required skill, experience, and qualifications to perform the Work, and that it shall perform the Work in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and Work, and it shall devote sufficient resources to ensure that the Work is performed in a timely and reliable manner; (d) it shall perform the Work in compliance with all applicable federal, state, and local laws, orders, and regulations, including by maintaining all licenses, permits, and registrations required to perform the Work; and (e) the workmanship, all materials and equipment furnished by Subcontractor, and all other aspects of the Work shall be provided in conformance with this Agreement, be of the finest quality, and be free from faults and defects. Without limiting the foregoing or any other liability or obligation with respect to the Work, Subcontractor shall, at its expense and by reason of its express warranty, make good any faulty, defective, or improper parts of the Work, as performed by Subcontractor. Without limiting the foregoing, if Contractor determines, or a customer makes a claim, that there is a fault or defect in Subcontractor’s Work, Subcontractor shall use its best efforts to remedy such fault or defect promptly at Subcontractor’s sole cost and expense. If Subcontractor fails to do so, Contractor shall have the right to either (a) receive a refund from Subcontractor for the full amount paid to Subcontractor for such Work (b) withhold from any future payments due to Subcontractor, or (c) have the Work performed by another subcontractor and charge Subcontractor the costs to do so. The foregoing remedies shall be in addition to any and all other remedies available to Contractor at law or in equity.

(d) Subcontractor shall have no authority to incur or alter any obligation of Contractor or bind Contractor to any contract, obligation, or commitment. If Contractor provides Subcontractor with certain parts or products (“Parts”) Subcontractor must use the Parts provided by Contractor. Upon Subcontractor’s receipt of the Parts, Subcontractor shall be liable for any damage, theft, or loss of the Parts. Subcontractor will not have, or at any time acquire, any right, title, or interest in the Parts, except the right to possession and use as provided for in this Agreement or any applicable Work Order. As between Contractor and Subcontractor, Contractor will be the sole owner of the Parts. If Subcontractor cannot use the Parts provided by Contractor, Subcontractor must contact Contractor with a detailed explanation and must receive approval from Contractor before proceeding with the Work using alternate parts or products. If the Parts are delivered to Subcontractor damaged, or Subcontractor otherwise does not utilize the Parts for a Work Order, Subcontractor must contact Contractor for returned goods authorization.

**10. CONFIDENTIAL INFORMATION**:

(a) Subcontractor, its Affiliates, agents, servants, and employees understand that Contractor and/or its Affiliates may provide information, including Confidential information (as defined below), which is needed for Subcontractor to perform in accordance with its obligations hereunder. Subcontractor understands and agrees that it will use Contractor’s (including its Affiliates) Confidential Information only in connection with and to the extent necessary to accomplish the purposes of this Agreement and in the manner described hereunder or as required to comply with a court order, administrative subpoena or order, or applicable governmental regulation, ordinance, or statutory requirement.

(b) The term “Affiliate” means, with respect to either party, any entity that directly or indirectly controls, is controlled by or is under common control with that party, and the term “Confidential Information” means any and all non-public information, technical data, or know-how, including, without limitation, that which relates to: (i) research, product or service ideas or plans, pricing, services, customers, personnel, markets, software, software code, software documentation, developments, inventions, lists, trade secrets, data compilations, processes, designs, drawings, installation methods, engineering, marketing, or finances, in oral, visual, written, electronic, or other tangible or intangible form, whether or not marked, designated, or otherwise identified as “confidential” or “proprietary” at the time of disclosure, and/or materials resulting from Work and/or support, and any derivatives thereto, (ii) all improvements, embellishments, amendments, compilations and recompilations of any of the materials described above and defined as Confidential Information, which is created by Subcontractor (“Improvements”), and (iii) the terms and conditions of this Agreement.

(c) Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how that, without restriction on disclosure, is: (a) in the public domain or becomes available to the public and not as a result of the act or omission of the Subcontractor; (b) rightfully obtained by the Subcontractor from a third party; (c) is lawfully in the possession of the Subcontractor at the time of disclosure; or (d)is approved for release by written authorization of the Contractor.

(d) Subcontractor shall maintain in confidence all Confidential Information received from Contractor or its Affiliates, and Subcontractor shall not use any Confidential Information for its own benefit or for the benefit of another, except for the limited purpose described hereunder. Subcontractor will not disclose Confidential Information to anyone without Contractor’s prior written consent. Subcontractor shall use best efforts to avoid disclosure, dissemination or unauthorized use of Confidential Information.

(e) Subcontractor shall restrict the possession, knowledge and use of Confidential Information to its directors, officers, employees, contractors, agents, legal and accounting advisers, and entities controlled by Subcontractor (collectively, “Personnel”), who (i) have a need to know the Confidential Information in connection with the Agreement, (ii) are informed of the confidential nature of the Confidential Information, and (iii) have obligations with respect to the Confidential Information that are consistent with and no less restrictive than those listed in this Agreement. Subcontractor shall be responsible for any unauthorized use or disclosure of the Confidential Information by any of its Personnel.

(f) All Confidential Information will remain the sole and exclusive property of Contractor. Contractor’s disclosure of Confidential Information will not constitute an express or implied grant to Subcontractor of any rights to or under the Contractor’s patents, copyrights, trade secrets, trademarks or other intellectual property rights. Except to the extent permitted by applicable law in the absence of any express license or other grant of rights, Subcontractor will not use any trade name, trademark, logo or any other proprietary rights of Contractor (or any of its Affiliates) in any manner without prior written authorization of such use by the Chief Executive Officer of Contractor.

(g) The Confidential Information shall not be photocopied, reproduced, or distributed to others at any time without the prior written consent of Contractor, except as otherwise authorized herein. Within five (5) days following: (i) termination of this Agreement; (ii) the accomplishment of the purposes for which the Confidential Information was provided; or (iii) receipt of a written notice from Contractor requesting return or destruction of the Confidential Information, Subcontractor, and/or any Personnel will promptly return all originals, and return or destroy copies, transcriptions, or other reproductions of the Confidential Information in its possession to Contractor. The Subcontractor shall, in such event, use its best efforts to make certain that no copies of the Confidential Information are retained in its possession following the return of such Confidential Information.

(h) The Parties acknowledge and agree that Contractor and/or its Affiliates would be irreparably harmed if any of the Confidential Information disclosed by Contractor were to be disclosed to any third party, or if any use were to be made of the Confidential Information other than as specified in this Agreement, and each further agrees that Contractor shall have the right to seek and obtain, without having to post bond or other security, preliminary and permanent injunctive relief upon any violation or threatened violation of the terms of this Section 10 in addition to all other rights and remedies available at law or in equity.

**11. INTELLECTUAL PROPERTY RIGHTS:**

(a) Contractor is and will be the sole and exclusive owner of all right, title, and interest throughout the world in and to all the results and proceeds of the Work performed under this Agreement and all other writings, technology, inventions, discoveries, processes, techniques, methods, ideas, concepts, research, proposals, Parts, and materials, and all other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, modified, conceived, or reduced to practice in the course of performing the Work or other work performed in connection with the Work or this Agreement (the “Work Product”) including all patents, copyrights, trademarks (together with the goodwill symbolized thereby), trade secrets, know-how, and other confidential or proprietary information, and other intellectual property rights (collectively “Intellectual Property Rights”) therein. Subcontractor agrees that the Work Product is hereby deemed "work made for hire" as defined in 17 U.S.C. § 101 for Contractor and all copyrights therein automatically and immediately vest in Contractor. If, for any reason, any Work Product does not constitute “work made for hire” Subcontractor hereby irrevocably assigns to Contractor, for no additional consideration, its entire right, title, and interest throughout the world in and to the Work Product, including all Intellectual Property Rights therein, including the right to sue for past, present, and future infringement, misappropriation, or dilution thereof.

(b) To the extent any copyrights are assigned under this Section 11, Subcontractor hereby irrevocably waives in favor of Contractor, to the extent permitted by applicable law, any and all claims it may now or hereafter have in any jurisdiction to all rights of paternity or attribution, integrity, disclosure, and withdrawal and any other rights that may be known as “moral rights” in relation to all Work Product to which the assigned copyrights apply.

(c) Upon the request of Contractor, during and after the Term, Subcontractor shall promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, and provide such further cooperation, as may be necessary to assist Contractor to apply for, prosecute, register, maintain, perfect, record, or enforce its rights in any Work Product and all Intellectual Property Rights therein. In the event Contractor is unable, after reasonable effort, to obtain Subcontractor’s signature on any such documents, Subcontractor hereby irrevocably designates and appoints Contractor as its agent and attorney-in-fact, to act for and on Subcontractor’s behalf solely to execute and file any such application or other document and do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights, or other intellectual property protection related to the Work Product with the same legal force and effect as if Subcontractor had executed them. Subcontractor agrees that this power of attorney is coupled with an interest.

(d) As between Subcontractor and Contractor, Contractor is, and will remain, the sole and exclusive owner of all right, title, and interest in and to any documents, specifications, data, know-how, Parts, methodologies, software, and other materials provided to Subcontractor by Contractor ("Contractor Materials"), including all Intellectual Property Rights therein. Subcontractor has no right or license to reproduce or use any Contractor Materials except solely during the Term to the extent necessary to perform Subcontractor’s obligations under this Subcontractor. All other rights in and to Contractor Materials are expressly reserved by Contractor. Subcontractor has no right or license to use Contractor's trademarks, service marks, trade names, logos, symbols, or brand names.

**12. TERM AND TERMINATION:**

(a) The initial term of this Agreement shall be the term of the Work Order. If no term is  
stated in the Work Order, the term of this Agreement shall be so long as the parties have obligations to one another under the Work Order or this Agreement.

(b) Notwithstanding anything contained herein to the contrary, Contractor may, without cause and for any reason whatsoever, terminate this Agreement and any Work Order at any time upon notice (whether oral, written, or through electronic communications) to Subcontractor. In such event, the Contractor shall be liable to Subcontractor only for cost of Work actually performed by Subcontractor at the time of said notice (subject to the provisions of Sections B7 and B8 of the Terms and Conditions hereinabove) and for no further compensation or damage.

**13. GOVERNING LAW AND VENUE:** This Agreement shall in all respects be interpreted, construed in accordance with, and governed by, the internal laws of the State of Georgia, without regard to its rules on conflict of laws. Each of the parties hereby irrevocably submits to the exclusive jurisdiction of the local, state, and federal courts located in Georgia in any action, suit, or proceeding relating to, or in connection with, this Agreement. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY WORK ORDER, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS DECIDED TO ENTER INTO THIS AGREEMENT IN CONSIDERATION OF, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

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**14. MISCELLANEOUS**:

(a) This Agreement, together with any Work Order(s) incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement, and the related Exhibits and Work Order(s) (other than an exception expressly set forth as such in the Exhibit or Work Order(s)), the statements in the body of this Agreement shall control. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(b) Subcontractor shall be responsible for determining the location of, and for any damage caused by it to, any underground objects, including but not limited to sewer, water, gas, electric or telephone lines, cables, pipes, and tunnels.

(c) Subcontractor shall obtain and pay for all taxes, permits, licenses, and official inspections made necessary by its Work and comply with all laws, ordinances, and regulations relating thereto.

(d) It may be necessary to occupy a portion of the Work which has been either partially or fully completed by Subcontractor prior to final inspection or acceptance by the Owner. Such occupancy shall not relieve the Subcontractor of its guarantee of Work or modify the warranty period described above.

(e) Subcontractor shall use best efforts to furnish to Contractor such further information or assurances, execute and deliver such additional documents, instruments and conveyances, and take such other actions as may be necessary or appropriate to carry out the provisions of this Agreement and any applicable Work Order in order to give effect to the transactions contemplated hereby.

(f) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(g) No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(h) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. Any such modification or alteration without said consent shall void the entire Agreement.

(i) In the event that any party institutes any legal suit, action, or proceeding against the other party to enforce the covenants contained in this Agreement (or obtain any other remedy in respect of any breach of this Agreement or arising out of this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.

(j) The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to equitable relief, including injunctive relief or specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

(k) Subcontractor may not assign the Agreement or any monies due, or to become due, hereunder without the prior written consent of Contractor.