

**DELONG'S, INC.**  
**ERECTOR SUBCONTRACT TERMS AND CONDITIONS**

**1. SCOPE OF WORK**

**1.1. AISC Code of Standard Practice.** Subcontractor and Steel Fabricator agree that the Work shall be provided in accordance with the terms of this Agreement and the American Institute of Steel Construction Code of Standard Practice for Buildings and Bridges, the current edition as of the date of execution of this Subcontract.

**1.2.** With respect to the Subcontract Work, the Subcontractor shall assume toward the Steel Fabricator all obligations, risks and responsibilities which the Steel Fabricator has assumed towards the Contractor and Owner under the Contract Documents including, without limitation, all requirements relating to the quality, quantity and timeliness of the work.

**1.3.** The Subcontractor acknowledges that it has been informed the Contract Documents are available for its inspection at the Steel Fabricator's offices at all reasonable times, and that the Subcontractor has inspected the Contract Documents to the extent it feels necessary to understand all of the requirements applicable to the Subcontract Work.

**1.4.** In carrying out all of its Subcontract Work, the Subcontractor shall comply with all applicable laws, regulations, ordinances, rules, codes, statutes, and other requirements of local, state or federal governmental authorities having jurisdiction over the Project ("Laws"), including, without limitation, Laws relating to payment of or working conditions for employees, non-discrimination, immigration, employment taxes, health or safety of employees and other persons, licensing statutes or rules, and building codes.

**1.5.** The Subcontractor shall obtain and pay for all permits, fees, and licenses necessary for execution of the Subcontract Work.

**1.6.** The Subcontractor shall provide to the Steel Fabricator, within five (5) days of the effective date of this Subcontract, the names and addresses of all material manufacturers, suppliers, and sub-subcontractors the Subcontractor intends to use in completing the Subcontract Work. Should any of those proposed be unacceptable to the Contractor, or Owner, the Subcontractor shall use another supplier, manufacturer or sub-subcontractor acceptable to the Steel Fabricator, at no additional charge to the Steel Fabricator.

**1.7.** The Subcontractor's Superintendent or Foreman shall attend all progress and safety meetings while the Subcontract Work, or any part of it, is in progress, or as requested by the Steel Fabricator, and shall be prepared to address schedules, manpower, deliveries, and relevant safety issues. Representatives of sub-subcontractors whose work is critical under the current schedule may also be required to attend these meetings.

**2. PAYMENT**

**2.1. Progress Payments.**

**2.1.1.** Within ten (10) calendar days of the effective date of this Subcontract, the Subcontractor shall submit to the Steel Fabricator a schedule of values for all Subcontract Work to be done on a lump sum price basis, showing the amount included in each principal category of Subcontract Work to be done for the lump sum price. If the Steel Fabricator approves the schedule of values, it shall serve as the basis for progress payments as to all lump sum price work. If the breakdown is not approved, the Steel Fabricator shall establish a reasonable breakdown as a basis for progress payments as to lump sum price items.

**2.1.2.** The Subcontractor shall submit to the Steel Fabricator Applications for Payment on the AIA Document G702/703 (1992) or similar form. Each Application for Payment shall describe the Work performed during the preceding payment period for which payment is requested, as specified in the form, and include such other information and back-up documentation as the Steel Fabricator may reasonably require. Among other things, but without limitation, the Subcontractor may be required to provide invoices to verify costs incurred and claimed, certified payrolls and lien and claim waivers in a form acceptable to the Steel Fabricator. All lien waivers shall be in the form acceptable to Steel Fabricator. Subcontractor's acceptance of periodic progress payments shall constitute a waiver of any and all claims by the Subcontractor against Steel Fabricator, Contractor, the Owner, and Architect, through the date of the Application for Payment, unless such claims are expressly reserved in writing on the face of the Application for Payment.

**2.1.3. Retainage.** Unless otherwise specifically noted in the Attachments, a retainage of ten (10) percent shall be withheld from each progress payment until the Project is 50% complete. Retainage will be reduced to five percent (5%) of the total Contract Sum after 51% of the Project has been completed.

**2.1.4.** To the fullest extent allowable by law, receipt of payment by the Steel Fabricator from the Owner and Contractor shall be a condition precedent for payment to the Subcontract by the Steel Fabricator. The obligations under this clause are severable. The inapplicability of this paragraph due to statute, court decision, or any other basis shall not nullify, reduce, or limit other obligations set forth herein. The Subcontractor agrees that progress payments are subject to the absolute condition precedent that the Owner, Contractor, and Steel Fabricator have approved the Subcontract Work as being in accordance with the Subcontract (including applicable Contract Documents requirements), that the Subcontractor has provided the Steel Fabricator with satisfactory proof it has paid all amounts it owes in connection with the Subcontract, and that the Owner or Contractor has actually paid the Steel Fabricator for that Subcontract Work. Failure to satisfy any of these conditions shall constitute a failure by the Subcontractor to have performed in accordance with the provisions of this Subcontract. The Steel Fabricator shall not be required to pay the Subcontractor amounts in excess of those actually accepted and paid by the Contractor or Owner with respect to any Subcontract Work. The Subcontractor is not entitled to interest on progress payments made after the date set forth herein.

**2.1.5.** All material and work covered by progress payments, wherever located, is automatically the property of the Steel Fabricator or, if the Contract Documents so provide, the property of the Owner. This provision shall not relieve the Subcontractor from the sole responsibility and liability for all work and materials upon which payments have been made, until final acceptance of them by the Owner. The fact that a progress payment has been made with respect to any portion of the Subcontract Work shall not constitute an acceptance of that work if it is defective or otherwise not in conformity with the Subcontract, and shall not constitute a waiver of any of the Steel Fabricator's, Contractor's or the Owner's rights or remedies against the Subcontractor with respect to any defects or other failures to conform to the Subcontract, including applicable requirements of the Contract Documents.

## **2.2. Final Payment.**

**2.2.1.** Within ten (10) days after completing the Subcontract Work, the Subcontractor shall submit to the Steel Fabricator a written Application for Final Payment, which is supported by such back-up documentation and further information as the Steel Fabricator may reasonably require.

**2.2.2.** To the fullest extent allowable by law, receipt of payment by the Steel Fabricator from the Owner and Contractor shall be a condition precedent for final payment to the Subcontract by the Steel Fabricator. The obligations under this clause are severable. The inapplicability of this paragraph due to statute, court decision, or any other basis shall not nullify, reduce, or limit other obligations set forth herein. The Subcontractor agrees that final payment is subject to the absolute conditions precedent that the Steel Fabricator, Contractor, and the Owner have approved the Subcontract Work as being in accordance with the Subcontract (including applicable Contract Documents requirements), that the Subcontractor has provided the Steel Fabricator satisfactory proof it has paid all amounts it owes in connection with the Subcontract, and that the Owner or Contractor has actually paid Steel Fabricator in full for the Subcontract Work. Failure to satisfy any of these conditions shall constitute a failure by the Subcontractor to have performed in accordance with the provisions of this Subcontract so that payment shall not be due. The Steel Fabricator shall not be required to pay the Subcontractor in final payment or retainage any amounts in excess of those actually accepted and paid by the Owner with respect to any Subcontract Work. The Subcontractor is not entitled to interest on final payments, or retainage amounts, paid after the date set forth herein.

**2.2.3.** Acceptance of final payment shall constitute a waiver of all of the Subcontractor's claims for further compensation or claims under the Subcontract, except those that have been specifically identified in writing either before the Application for Final Payment is submitted or in the Application for Final Payment itself.

## **2.3. Withholding on Applications for Payment.**

**2.3.1.** The Steel Fabricator may withhold funds from any progress payment to the Subcontractor, or from final payment, to the extent that may be necessary to cover all costs associated with (1) defective Subcontract Work not remedied; (2) third-party claims which may be or have been filed against the Steel Fabricator as a result of matters relating to the Subcontract Work, or reasonable evidence indicating probable filing of such claims; (3) failure of the Subcontractor to make prompt payment to sub-subcontractors or suppliers for labor, materials or equipment; (4) reasonable evidence that lump sum price items cannot be completed for the unpaid balance of the agreed lump sum price; (5) damage to property of the Steel Fabricator, the Contractor, the Owner or another contractor or subcontractor working at the Project; (6) reasonable evidence that the Subcontract Work will not be completed within the Contract Time; (7) failures to carry out the Work in accordance with the Subcontract or the Steel Fabricator's directions; or (8) any material breach of the Subcontract. This remedy of withholding payment is not exclusive.

**2.3.2.** The Subcontractor agrees that the Steel Fabricator may pay all materialmen, suppliers, laborers, sub-subcontractors and any other persons who have not been paid the monies due them in connection with this Subcontract, and that the Steel Fabricator may credit the amount of any such payment against amounts otherwise due the

Subcontractor. Payments may be made directly to the materialmen, suppliers, laborers, sub-subcontractors, or by joint check, whichever shall seem more advantageous to the Steel Fabricator, in its sole discretion. This provision, allowing direct payment to materialmen, suppliers, laborers, sub-subcontractors, is intended for the protection of the Steel Fabricator only, and does not confer rights upon anyone not a direct party to this Subcontract, as a third-party beneficiary or otherwise. Monies retained by the Steel Fabricator as a result of the Subcontractor's failure to make payments to materialmen, suppliers, laborers, sub-subcontractors shall be regarded as trust funds that may be paid directly to the materialmen, suppliers, laborers, sub-subcontractors, and consequently, any such payments made, whether directly or by joint check, shall not constitute bankruptcy preferences. However, no amounts the Steel Fabricator pays to the Subcontractor in good faith, and which do not subsequently reach materialmen, suppliers, laborers, sub-subcontractors shall give rise to liability of the Steel Fabricator to the materialmen, suppliers, laborers, sub-subcontractors.

**2.3.3.** The Subcontractor agrees that all payments made to the Subcontractor, whether by joint check or otherwise, shall be used by the Subcontractor first to pay amounts due to materialmen, suppliers, laborers, sub-subcontractors supplying labor or materials for the Subcontract Work, and that only money remaining after such payments are made may be used for any other purpose. Monies paid by joint check shall be deemed to have been paid fully to the materialmen, suppliers, laborers, sub-subcontractors named as a joint payee, unless the Steel Fabricator agrees otherwise in writing. The Steel Fabricator may require that a materialmen, suppliers, laborers, sub-subcontractors who is to receive payment by joint check acknowledge in writing that it will demand payment to it of the full amount of the check, and will not remit any portion thereof to the Subcontractor.

### **3. INSURANCE AND INDEMNIFICATION**

**3.1 General.** Unless higher limits or additional coverages are required by the Subcontract or Prime Contract, prior to the commencement of any work, Subcontractor shall secure, purchase and maintain, at its own expense, the following types of insurance coverage and limits of liability. These insurance requirements and the obligations of the indemnification agreement that is part of this contract shall also apply to anyone hired by Subcontractor to Work under this agreement.

#### **Workers' Compensation**

Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits under the Worker's Compensation laws of any applicable jurisdiction in which the Scope is to be performed.

#### **Employers' Liability Insurance with minimum limits of:**

- \$500,000 Each Accident*
- \$500,000 Disease Each Employee*
- \$500,000 Disease Policy Limit*

Policy coverage terms and conditions to include:

- USL&H – where applicable.
- Jones Act – where applicable.
- All states endorsement – where applicable.
- Employers Liability/Stop Gap Liability if work is performed in the State of Washington, Wyoming, Ohio, North Dakota or the Commonwealth of Puerto Rico.
- Certificate must clearly identify that coverage applies in the State in which the Project is located.

#### **Commercial General Liability**

Commercial General Liability Insurance ("CGL") written on ISO form CG 00 01 **occurrence form** or equivalent for hazards of: (a) Construction Operation, (b) Subcontractors and Independent Contractors, (c) Products and Completed Operations

**The insurance shall have the following minimum limits of liability of:**

- \$1,000,000 Each Occurrence*
- \$1,000,000 Personal and Advertising Injury*
- \$2,000,000 General Aggregate*
- \$2,000,000 Products / Completed Operations Aggregate*

The general aggregate coverage limits shall be per project general aggregate and shall be evidenced on Subcontractor's Certificate of Insurance.

The insurance shall include:

- Contractual liability coverage sufficient to meet the requirements of this Subcontract Agreement (including defense costs and attorney’s fees assumed under the contract, which shall be payable in addition to the limit of liability.)
  - To the extent aligned with and permissible applicable law, no Contractual Liability Coverage Exclusion modifying or deleting the definition of “insured contract” from the unaltered ISO CG 00 01 Edition date 10/01 ( CG 24 26 or similar)
- Personal Injury Liability ( with contractual exclusions deleted)
- Perils of Explosion, Collapse, & Underground (XCU)
- Electronic Data (CG 04 37 or similar)
- Additional Insured coverage must be primary and non-contributory
- No separation of insured exclusion
- No subsidence exclusion
- No damage to Work performed by Subcontractor exclusion ( CG 22 94 or similar)

If marked as required the Subcontractor’s CGL Insurance is required to provide the following coverages:

	Required	
	YES	NO
• Mold	■	■
• EFIS	■	■
• Operations performed within 50 feet of a railroad property	■	■
• Operations involving residential, multi-family or apartments	■	■
• Limited Jobsite Pollution	■	■

For each insurance category checked ‘Yes’ above, Subcontractor’s CGL insurer and/or broker will evidence, through Policy endorsement, or provide written confirmation, that such coverage is intact, even if each respective insurance certificate lists that type of coverage and describes its liability limits.

Subcontractor shall maintain general liability coverage for both Products and Completed Operations Insurance and the Additional Insured for the statute of repose. Subcontractor shall continue to provide evidence of such coverage to Steel Fabricator on an annual basis during the aforementioned period including all of the terms of the insurance and indemnification requirements of this agreement.

**Commercial Automobile Liability**

**Commercial Automobile Liability insurance covering all owned, leased and non-owned vehicles used in connection with the Scope with limits of:**

***\$1,000,000 Combined Single Limit***

The insurance shall include:

- Coverage for bodily injury, death and property damage arising out of ownership, maintenance or use of any motorized vehicle on or off the site of the Project, and Contractual Liability coverage
- If hauling of hazardous waste is part of the Scope, Automobile Liability Insurance with a \$1,000,000 combined single limit per occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles, and include MCS 90 endorsement and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile).
  - If CGL 12/04 or later edition is provided, the CA0051 1204: Mobile Equipment Subject to Motor Vehicles Laws shall also be provided. This additional endorsement is not required if the 2006 ISO Auto form is provided.

**Excess/Umbrella Liability**

Required	YES	NO
	■	■

**Commercial Umbrella/Excess Liability Insurance for bodily injury and property damage liability must sit over Subcontractor’s primary Employer’s Liability, Commercial General Liability and Commercial Automobile Liability with limits of:**

*\$1,000,000 each occurrence and aggregate.*

All coverages and terms required under the Commercial General Liability, Automobile Liability and Employer’s Liability must be included on the Excess/Umbrella Liability policy.

Higher limits may be required by Steel Fabricator or Owner on a project by project basis.

Subcontractor’s Excess/Umbrella Liability Policy shall provide liability coverage, subject to the terms and conditions of the policy, in excess of all available underlying coverage before any primary or excess coverage held by any Additional Insured.

**Leased Employee Liability**

If Subcontractor leases one or more employees through the use of a payroll, employee management or other company, and workers compensation/employer’s liability coverage is not provided by the payroll, employee, management or other company, then the Subcontractor must directly procure workers compensation/employer’s liability insurance. The workers’ compensation and employer’s liability coverage provided to and for the leased employees by the payroll, employee management or other company shall be evidenced and include an Alternate Employer/Leased Employee Endorsement, naming Subcontractor as the alternate employer. The employer’s liability must be scheduled under applicable umbrella (except in state where employer’s liability is unlimited).

The insurance shall be written on a “minimum premium” or “if any” policy form.

**Professional Liability**

Required

YES	NO
■	■

If marked as required, Subcontractor and all Sub-consultants providing professional services shall provide and maintain Professional Liability Insurance coverage. The policy coverage shall be effective (retroactively, if applicable) from the date of commencement of all professional activities in connection with the Scope.

**Both Subcontractor and listed Sub-Subcontractors shall have proof of professional liability coverage in the amount of:**

*\$1,000,000 per claim with a maximum deductible of \$25,000 to be paid by Subcontractor.*

Coverage shall include coverage for contractual liability

The Subcontractor and Sub-consultants shall maintain for the statute of repose, following completion of the project.

Any erosion of insurance limits required will be reinstated to the required amounts prior to commencing the contracted work and if during the contracted period claims are made against the design professional’s policy the necessary reduction of available limits will be repurchased to the contractually required amounts.

**Pollution Liability**

Required

YES	NO
■	■

If marked as required, Subcontractor and all applicable Sub-Subcontractors must provide and maintain a separate Pollution Liability Insurance policy. Pollution Liability policy must include contractual liability coverage aligned with indemnification obligation of Subcontract Agreement.

Additionally, the Pollution Liability Insurance policy shall name Steel Fabricator and all other parties as required under the Prime Contract as Additional Insureds.

**The policy limits shall be in the amount of:**

*\$1,000,000 each occurrence and aggregate with maximum deductible of \$25,000 to be paid by the Subcontractor.*

Unless otherwise determined acceptable by Steel Fabricator, The policy shall cover the liability of the Subcontractor during the process of construction, removal, storage, encapsulation, transport and disposal of hazardous waste and contaminated soil and or asbestos abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental, including no exclusion for mold or asbestos. The policy shall also include defense and clean-up costs.

The Subcontractor and Sub-Subcontractor shall maintain pollution liability coverage for the statute of repose following completion of the project. Should mold coverage be required and be provided by a claims made form, the coverage shall be maintained annually, following completion, for the statute of repose.

**Builders Risk Coverage**

**It is the responsibility of the Subcontractor to inquire about Builders' Risk coverage**

If required per Steel Fabricator contract with Owner:

Steel Fabricator and Subcontractor waive all rights against (1) each other and any of their Vendors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their Subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as fiduciary. Subcontractor shall require of Subcontractor agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**Installation Floater**

If required by Steel Fabricator or not covered by the Builders Risk insurance, Subcontractor shall obtain an Installation Floater to cover that portion of the work to be constructed, installed, altered, or repaired by Subcontractor. If Contractor or Owner, or other party as required by the Prime Contract, have a financial interest, those parties shall be listed as a loss payee.

**Equipment Floater**

Subcontractor shall maintain at its sole cost and expense insurance to protect its own equipment, tools and materials against risk of loss with sufficient limits to cover the value of all of the equipment, tools and materials Subcontractor may use in performance of the Work. Subcontractor is solely responsible for any deductibles, self-insured retentions or uninsured losses for any reason arising out of Subcontractor's obligations of this Section. Coverage shall include equipment leased/borrowed/rented by Subcontractor.

**Riggers Liability Required:**

Required

YES

NO



If marked as required, the scope involves the rigging, hoisting, lowering, raising or moving of property or equipment belonging to others and Riggers Liability Insurance is required to insure against physical loss or damage to the property or equipment

**Additional Insureds:**

The following insurance policies shall name 1) Steel Fabricator 2) Any other person or organization as required by the Prime contract or this Agreement as Additional Insured:

- Commercial General Liability
- Commercial Auto Liability
- Commercial Umbrella Liability

- Pollution Liability

Coverage shall be primary and non-contributory to any insurance maintained by Additional Insured and any other parties as required by Owner Contract, all of which shall be stated on the Certificate of Insurance provided by the Subcontractor.

The General Liability Additional Insured endorsement(s) shall provide:

- 1) that any person or organization that Subcontractor is required to add as an Additional Insured under the contract or agreement shall be included as an Additional Insured (CG 20 38 04 13 or its equivalent).
- 2) The additional insured endorsement shall not limit the exception to the exclusion for “damage to your work”- coverage shall include coverage for damage to the work itself for completed operations performed by Sub-Subcontractor.

The General Liability Additional Insured Endorsement must provide status in favor of required parties including both ONGOING Operations AND COMPLETED Operations. Vicarious forms of additional insured endorsements will not be accepted. Evidence, by endorsement or policy language, of additional insured and primary and non-contributory coverage must be provided with the certificate of insurance for General Liability.

**Waiver of Subrogation**

All insurance coverages maintained by Subcontractor shall include a waiver of any right of subrogation of the insurers thereunder in favor of Additional Insureds and all of their respective assigns, subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under any such policy (Workers Compensation – where permitted). Subcontractor further waives all claims and all rights of subrogation against Additional Insureds’ other contractors and all of their respective assigns, subsidiaries, affiliates, employees, insurers and underwriters for loss of, or damage to, Subcontractor’s Scope, tools, machinery, equipment, material, supplies, or any other losses within the scope of any insurance maintained by Subcontractor. If any of the Additional Insureds is partially or wholly self insured, then the waiver of subrogation shall apply as if they were in fact covered by their own insurance.

**Notice of Cancellation**

Subcontractor must certify that the Steel Fabricator will receive 30 days advance notice of any cancellation (except 10 days for non-payment).

**Continuation of Coverage**

Required insurance, including Additional Insured status for Completed Operations under the General Liability Policy, shall be maintained for the statute of repose following completion of the project and acceptance by the Owner.

**Certificates of Insurance**

Upon contract award, the Subcontractor shall furnish a certificate of insurance to show that the insurance specified in this contract is in force, stating policy numbers, dates of expiration, limits of liability and coverages there under

**Deductible**

Subcontractor shall be responsible, at no additional cost to Contractor for the payment of any associated deductibles or self insured retention in connection with the coverages required by this Attachment. Any self-insured retentions or deductible in excess of \$25,000 must be declared at the time Subcontractor submits its bid and must be specifically approved by Contractor prior to execution of the Subcontract.

**Claims-Made Policies**

Except for Professional Liability Insurance all liability policies must be an occurrence form, claims-made policies are not acceptable.

**Special Provisions**

All policies shall be written through companies duly entered and authorized to transact that class of insurance in the state in which the project is located. The Insurance Companies must have an A.M. Best rating of A- or better in the most recent Best’s Key Rating Guide.

Approval, disapproval or failure to act by the Steel Fabricator regarding any insurance supplied by the Subcontractor shall not relieve the Subcontractor of full responsibility or liability for damages and accidents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the Subcontractor from liability.

Steel Fabricator shall make no special payments for any insurance that the Subcontractor may be required to carry; all are included in the contract price and in the contract unit prices.

The Subcontractor shall require all Sub-Subcontractors to procure and maintain all insurance as set forth in this contract.

**3.2 Evidence of Insurance.** Subcontractor shall furnish Steel Fabricator with a certificate of insurance (or certified copies of its insurance policies), which Subcontractor warrants and represents is a true and accurate representation of Subcontractor's existing insurance coverage. This certificate shall indicate all endorsements, including Steel Fabricator, Contractor, and Owner if applicable, as additional insured by standard endorsements. No progress payment will be made unless Steel Fabricator has been furnished evidence of required coverages and endorsements as required by this Subcontract. Subcontract Work may not begin until the Subcontractor has delivered satisfactory evidence to the Steel Fabricator that all required insurance is in place. Any delays in the completion of the Subcontract Work due to the Subcontractor's failure to obtain or maintain insurance shall be treated as delays due to the Subcontractor's breach of contract.

**3.3 Products and completed operations coverage** shall extend and continue in effect through and until the claims limitation period set forth in the applicable state statute of repose exists, then through the period set forth in the applicable statute of limitations for the state in which the project is constructed.

**3.4 Failure to Maintain Insurance.** If the Subcontractor fails to obtain the required insurance coverage, or if that coverage is permitted to lapse, or is canceled or ceases to be in effect, for any reason, at any time before the Subcontract Work is completed (or such later date as is specified by the Contract Documents), that event shall constitute a material breach entitling the Steel Fabricator to terminate the Subcontract for default, or at Steel Fabricator's option it may purchase such coverage and charge the expense thereof to the Subcontractor.

**3.5 Subcontractor's Indemnity, General. TO THE FULL EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE STEEL FABRICATOR, CONTRACTOR, ARCHITECT, AND THE OWNER, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES AND ANY OTHER PERSON OR ENTITY AS REQUIRED BY THE CONTRACT DOCUMENTS ("INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, INJURIES, FINES, PENALTIES, LOSSES, EXPENSES (INCLUDING ATTORNEYS' FEES), DAMAGES AND LIABILITIES OF EVERY NATURE, INCLUDING CONTRACTUAL LIABILITY ("LOSSES"), ARISING FROM OR RELATING TO WORK PERFORMED BY THE SUBCONTRACTOR ON THE PROJECT, OR RELATING TO THE PRESENCE ON THE PROJECT OF THE SUBCONTRACTOR'S EMPLOYEES OR THE EMPLOYEES OF ITS SUB-SUBCONTRACTORS AT ANY TIER, TO THE EXTENT OF THE SUBCONTRACTORS, ITS EMPLOYEES OR AGENTS NEGLIGENCE, ACTS OR OMISSIONS. THE SUBCONTRACTOR'S OBLIGATIONS UNDER THIS ARTICLE SHALL BE IN ADDITION TO ANY INDEPENDENT LIABILITY IMPOSED BY THE CONTRACT DOCUMENTS. WITHOUT LIMITATION, THIS INDEMNITY SHALL EXTEND TO LOSSES ARISING FROM THE SUBCONTRACTOR'S VIOLATIONS OF LAWS. THE SUBCONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY APPLICABLE WORKERS' COMPENSATION LAWS, AND, AS RESPECTS THIS INDEMNITY, THE SUBCONTRACTOR HEREBY EXPRESSLY WAIVES ALL IMMUNITIES AND DEFENSES THAT IT MAY HAVE UNDER SUCH LAWS. FURTHER, SUBCONTRACTOR SHALL BE RESPONSIBLE FOR PAYING THE LEGAL COSTS (INCLUDING ATTORNEYS FEES) FOR THE ATTORNEY OF STEEL FABRICATOR'S CHOOSING RELATING TO ANY CLAIM COVERED BY THIS PROVISION.**

**3.6 Subcontractor's Indemnity, Liens.** To the extent that any liens may legally attach to any portion of the Owner's property or the Project, the Subcontractor agrees to defend, indemnify and hold harmless the Steel Fabricator, Contractor and the Owner, and their successors in interest, from and against any and all mechanic's liens or other liens, or claims of rights to enforce liens, including any related expenses and legal fees, against the Project 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 (by bonding or otherwise), or shall reimburse the Steel Fabricator for all costs it incurs or may be compelled to pay in discharging any such lien or satisfying any such claim, including all attorneys fees and costs.

#### **4. SUBCONTRACTOR'S OBLIGATIONS**

**4.1.** The Subcontractor shall carefully examine this Contract and the Contract Documents, identify those portions affecting its work, and notify the Steel Fabricator in writing of any deficiencies, discrepancies, ambiguities, inconsistencies, or errors before proceeding with the affected work.



**4.2.** The Subcontractor represents that it is fully able, qualified and experienced to perform the work required by this Subcontract. It acknowledges that, before executing the Subcontract, the Subcontractor has ascertained, by its own independent investigation, the general and local conditions involved in performing the Subcontract Work including, without limitation, the location of the work, accessibility and character of the site, and all other matters which could affect the work or its cost under this Subcontract. The Subcontractor has verified all information furnished by the Steel Fabricator or others and is satisfied with its correctness and accuracy.

**4.3. Labor Harmony.**

**4.3.1.** Subcontractor shall be responsible for the maintenance and observance of sound labor practices by itself and its subcontractors, and shall take all steps reasonably necessary to avoid labor disputes and the potential delay and disruption arising therefrom. Subcontractor shall not be excused from performance of its work, nor shall Subcontractor be granted an extension of time for performance of its work, on account of a delay caused by any illegal activity of any labor organization directed against Subcontractor, Steel Fabricator, Contractor, the Project or any subcontractor of the Subcontractor working at the site.

**4.3.2.** The Subcontractor shall not employ people, means, materials or equipment which may cause strikes, work stoppages or any disturbance of workers employed by the Steel Fabricator or other contractors or subcontractors employed in connection with the Project. Should Subcontractor fail to comply with the foregoing provisions, Steel Fabricator shall have the right, in addition to any other rights and remedies provided by this Agreement or other Contract Documents or by law, after 48 hours written notice, to terminate this Agreement or any part thereof or the employment of the Subcontractor for all or any portion of the Work, and for the purpose of completing the Work, to enter upon the premises and take possession of the Project. Subcontractor shall be responsible for any damages or losses suffered by Steel Fabricator, Contractor, Owner, and any Separate contractors as a result of Subcontractor's failure to comply with this Paragraph.

**5. TIME**

**5.1.** The Subcontractor shall participate and cooperate in scheduling the times and sequences required in the Subcontractor's Work and shall work in strict accordance with any schedule provided by the Steel Fabricator, including any updated or modified schedules. If necessary to assure such prompt performance, the Subcontractor shall accelerate its performance, at its own cost, to make up any delays caused by its own actions or omissions or those of its subcontractors or suppliers. If the Subcontractor fails to do so, the Steel Fabricator may itself take whatever actions it deems necessary to expedite material deliveries or completion of work, and charge the resulting costs to the Subcontractor.

**5.2.** If the Subcontractor fails to adhere to the established schedules, or misses any milestone in any such schedule, or if the Subcontractor abandons the job or fails to have its workers on the Site and productively employed for three (3) days or more, the Steel Fabricator may direct the Subcontractor to accelerate its work, by incurring overtime, double-shifting, expediting deliveries, or otherwise. The Subcontractor shall promptly comply with such a direction, at its own cost and without adjustment to its compensation, unless it is determined that the Subcontractor was entitled to a Change Order extending the time and cost within which to complete the Subcontract Work. Further, if the Subcontractor's acceleration causes the Steel Fabricator to incur additional costs, the Subcontractor shall pay those costs, without reimbursement by the Steel Fabricator, unless it is determined that the Subcontractor is entitled to a Change Order extending its time and cost. If the Subcontractor disagrees with an order to accelerate, it shall nevertheless comply, and may pursue a claim as provided in this Subcontract.

**5.3.** The Subcontractor shall be entitled to such extensions of time as the Steel Fabricator may receive from the Owner or Contractor, to the extent that they are applicable to the Subcontract Work, and to no other extensions of time.

**5.4.** The Subcontractor will coordinate its work with the work of the Contractor and other subcontractors, so that no delays or interference will occur in the completion of the any part or all of the Project.

**5.5.** If Subcontractor's work is delayed for any reason not caused by the Subcontractor, the Subcontractor may request an extension of time for the performance of its Work. The Subcontractor shall not be entitled to and shall make no claim for damages arising out of or relating to delays, disruptions, suspensions, accelerations, inefficiencies or impacts upon the work.

**5.6.** If the Contract Documents provide for assessment against the Steel Fabricator of liquidated delay damages, or actual delay damages suffered by the Owner, the Subcontractor shall be liable to the Steel Fabricator for any portion of such damages that may be fairly attributed to the Subcontractor's delays. The Subcontractor shall also be liable for any actual damages suffered by the Steel Fabricator as a result of the delays.

**6. SUBCONTRACTOR'S LIABILITY**

**6.1.** The Subcontractor hereby assumes the entire responsibility and liability for all work, supervision, labor, and materials provided hereunder and for all equipment, supplies and other things provided by the Subcontractor until final acceptance of the work by the Owner. In the event of any loss, damage or destruction thereof from any cause, the Subcontractor shall be liable for it, and shall repair, rebuild and make good the loss, damage or destruction at the Subcontractor's own cost.

**6.2.** The Subcontractor shall be liable to the Steel Fabricator for all costs, including attorneys' fees, that the Steel Fabricator incurs as a result of the Subcontractor's failure to perform its work in strict compliance with this Subcontract, including the Contract Documents requirements applicable to the Subcontract Work. Such costs shall include, but not be limited to, actual costs or liquidated damages and consequential damages arising from delay damage claims the Owner makes against the Steel Fabricator as a result of delays the Subcontractor caused, the Steel Fabricator's increased costs to perform the Contract work as a result of delays or improper work caused by the Subcontractor, warranty and rework costs arising from the Subcontractor's Work, liability for accidents to persons or property caused by the Subcontractor, or litigation costs and attorneys' fees arising from actions to enforce this Subcontract, to recover for its breach, or to deal with third-party claims arising from the Subcontractor's breach of this Subcontract.

**6.3.** In the event that it becomes necessary for Steel Fabricator to supply labor, either by request or because of Subcontractor's negligence or default of its obligations hereunder, it is agreed that the costs of such supplemental or replacement labor will be backcharged to Subcontractor's account on a basis of Steel Fabricator's actual costs plus taxes, insurance and fringe benefits, plus seven percent (7%) for Steel Fabricator's general administration and overhead plus seven percent (7 %) profit for Steel Fabricator's having to subcontract out such supplemental or replacement subcontract work.

## **7. CHANGES TO SUBCONTRACT TIME, PRICE, OTHER TERMS**

**7.1.** The Steel Fabricator may, at any time, unilaterally or by agreement with the Subcontractor, without notice to the Subcontractor's sureties, make changes in the Subcontract Work. Any unilateral order directing a change shall be in writing signed by the Steel Fabricator, and any agreement between the Steel Fabricator and the Subcontractor changing the Subcontract Work shall be in writing and signed by both the Steel Fabricator and the Subcontractor. Any work completed without a written signed Change Order from the Steel Fabricator is at the expense of the Subcontractor. The Subcontractor shall perform the work as changed without delay, whether or not there has been any resolution of any claims the Subcontractor may have made for adjustments due to the change directive. Failure to proceed promptly with changed work shall constitute a material breach of the Subcontract.

**7.2.** The Subcontractor shall submit to the Steel Fabricator any requests for adjustment in the price, time, or other provisions of the Subcontract as a result of changes directed by the Owner or as a result of deficiencies or discrepancies in the Contract Documents or unforeseen site conditions. Such requests shall be submitted in writing by the Subcontractor in time to allow the Steel Fabricator to comply with the applicable provisions of the Contract Documents so as to protect the interest of the Subcontractor and others, including the Steel Fabricator. The Steel Fabricator shall likewise promptly notify the Subcontractor if the Steel Fabricator requests a reduction to the Subcontractor's compensation as a result of a change. Subcontract adjustments shall be made only to the extent that the Steel Fabricator is entitled to relief from, or must grant relief to the Owner. If a change involved the work of more than one subcontractor or of the Steel Fabricator itself, the Subcontractor shall be entitled only to a reasonably allocable share of the total adjustments made by any Change Order from the Owner to the Steel Fabricator. The Subcontractor's allocable share shall be determined by the Steel Fabricator, after allowance of the Steel Fabricator's normal overhead, profit and other interest in any recovery by making a reasonable apportionment, if applicable, between the Subcontractor, the Steel Fabricator and other subcontractors or persons with interest in the adjustment. This Paragraph shall apply to all equitable adjustments or other relief allowed by the Contract Documents. The Subcontractor's recovery of its allocable share of adjustments obtained from the Owner shall be its full and only remedy or compensation as a result of Owner-directed changes, deficiencies or discrepancies in the Contract Documents, or unforeseen site conditions.

**7.3.** If the Authorized Representative of the Steel Fabricator (identified as hereinafter provided) orders changes, independent of the Owner, Contractor, or the Contract Documents, and those changes materially affect the cost of performing the Subcontract Work, the Subcontractor shall be entitled to an equitable adjustment in the Subcontract Price, which must be set forth in a Change Order signed by the Authorized Representative of the Steel Fabricator. In accepting any such Change Order, the Subcontractor agrees that the adjustment contained in it constitutes full and complete compensation for the change, including any delays, disruptions, inefficiencies, escalations, impacts, or other consequences or costs, direct or indirect, that result from the change, and that no further adjustment will be sought with respect to that change.

**7.4.** If the Steel Fabricator requests, the Subcontractor shall submit, within seven (7) calendar days, a reasonable price quotation for proposed changes. If the Subcontractor does not submit such a price quotation, and the Steel Fabricator is required to submit a price to the Contractor and/or Owner for work including a Subcontract change, the Steel Fabricator shall

use its best estimate of the proposed change as it affects the Subcontract Work in the quotation to the Contractor and/or Owner. That estimate shall be the maximum equitable adjustment due to the Subcontractor for the change.

**7.5.** In all cases of claims or Change Order requests not involving Contractor or Owner-initiated changes, claims of deficiencies in the drawings or specifications, or unforeseen site conditions, Change Orders shall be priced on a lump sum basis where the parties reach agreement, or else shall be limited to direct material and direct labor costs, marked up by seven percent (7 %) for overhead and seven percent (7%) for profit. Direct labor for this purpose shall include applicable payroll taxes and fringes required by the Laws or applicable collective bargaining agreement, and direct material shall include taxes and delivery charges.

## **8. CLAIMS AND DISPUTES**

**8.1. Notice of Claims/Claim Procedures.** The Subcontractor shall provide written notice of all claims or disputes, and any other submissions or information required by the Contract Documents, within five (5) business days in which the Subcontractor knew or should have known of such claims. The Subcontractor shall also comply with all other requirements of the Contract Documents relating to such claims. The Subcontractor's failure to comply with these provisions with respect to any claim shall be deemed a waiver of the claim.

**8.2. Disputes involving the Contractor or Owner.** Subcontractor agrees that any and all disputes involving the Contractor and/or Owner shall be governed by the applicable notice, claim, dispute resolution, choice of law, and venue requirements in the applicable Steel Fabricator Agreement and/or Prime Contract.

**8.3. Dispute involving solely the Steel Fabricator.** The Subcontractor agrees that any and all claims or disputes arising out of or related to this Subcontract, solely involving the Steel Fabricator, shall be subject to mediation which shall be a condition precedent to arbitration. All claims not resolved in mediation shall be subject to arbitration. The parties shall mutually agree upon an arbitrator who is a construction lawyer with at least ten (10) years of construction law experience. The arbitrator shall require exchange by the parties of documents relevant to the issues raised by any claim, defense, or counterclaim on which the producing party may rely in support of or in opposition to any claim, defense, or counterclaim, with due regard for eliminating undue burden and expense and the expedited and lower cost nature of arbitration. At the request of a party, the arbitrator may at his or her discretion order the deposition of witnesses; however, depositions shall be limited to a maximum of three (3) depositions per party, each a maximum of six (6) hours duration.

**8.3.1.** Subcontractor hereby agrees that Steel Fabricator shall have the right to include Subcontractor, by consolidation, joinder or in any other manner, in any arbitration proceedings involving the Owner, Contractor, or any other person or entity, regardless of who originally initiated such proceedings. The foregoing agreement to arbitrate shall be specifically enforceable under the Federal Arbitration Act.

**8.3.2.** Unless Steel Fabricator elects otherwise, any mediation or arbitration proceedings hereunder shall be held in Jefferson City, Missouri. Subcontractor agrees that this forum is convenient, accepted and does not pose difficulty with either the availability of witnesses or documents.

**8.3.3.** The award rendered by the arbitrators shall be binding and final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**8.4. Duty to Continue Work.** Provided that the Steel Fabricator has promptly paid the Subcontractor all amounts due under this Subcontract, other than those subject to a good faith dispute, the Subcontractor shall proceed with the Subcontract Work, including any disputed portion thereof, without interruption or delay, while any claim or dispute is being considered, arbitrated or litigated. Failure to continue to work diligently during the pendency of a dispute or claim shall constitute a material breach of the Subcontract.

## **9. DAMAGE NOTIFICATION**

**9.1.** Notice of damage or additional cost for which the Subcontractor alleges the Steel Fabricator is responsible (and which is not otherwise more specifically addressed herein) shall be filed in writing with the Steel Fabricator within five (5) business days from commencement of such alleged damage or additional cost. The Subcontractor shall make no claim for extra or additional work unless the work is done pursuant to a written Change Order executed by Steel Fabricator's Designated Representative. Only the Designated Representative of the Steel Fabricator shall have authority to bind the Steel Fabricator to change orders or other written orders authorizing extra work or payment therefor.

## **10. PATENTS**

**10.1.** The Subcontractor shall defend, indemnify, and save harmless the Steel Fabricator, Contractor and the Owner from any and all claims or suits for infringements of patents or violations of patent rights, and shall indemnify the

Steel Fabricator, Contractor and the Owner from all costs or expenses arising from such claims or suits, including attorneys' fees, to the extent that such claims or suits arise in connection with the Subcontract Work.

## **11. INSPECTION AND ACCEPTANCE**

**11.1.** The Subcontractor shall provide appropriate facilities at all reasonable times for the Steel Fabricator's, Contractor's or the Owner's inspection of the work or materials provided under this Subcontract. The inspection may be at the Project site or at any place where such work or materials may be in preparation, manufacture, storage, or installation. The Subcontractor shall promptly replace or correct any work or materials which the Steel Fabricator, Contractor, or the Owner rejects as failing to conform to the requirements of the Subcontract. If the Subcontractor does not do so within a reasonable time, the Steel Fabricator shall have the right to do so and to charge the cost to the Subcontractor, or deduct the cost from payments otherwise due or to become due to the Subcontractor. If, in the Steel Fabricator's opinion, it is not expedient to correct or replace all or any part of the rejected work or materials, the Steel Fabricator may, at its option, deduct from payments due, or to become due, to the Subcontractor, such amounts as, in the Steel Fabricator's reasonable judgment, represent (i) the difference between the fair value of the rejected work or materials and its value if it had complied with the Subcontract, or (ii) the cost of correction, whichever is higher.

**11.2.** If any of the Subcontractor's work or materials are wrongfully rejected by the Owner, the Subcontractor's remedy for that wrongful rejection shall be limited to the Steel Fabricator's remedy under the Contract Documents.

**11.3.** The Subcontract Work shall be accepted or rejected according to the terms of the Contract Documents. However, unless otherwise specifically agreed in writing, entrance and use by the Owner or the Contractor, shall not constitute acceptance of the Subcontract Work. Payment shall also not constitute acceptance of the Subcontract Work.

## **12. TERMINATION**

### **12.1. Default Termination.**

**12.1.1.** The Subcontractor agrees that it materially breaches the Subcontract if the Subcontractor (i) fails promptly to pay for materials, supplies, labor, or other items purchased or used in connection with the Subcontract Work, (ii) fails to pursue the Subcontract Work promptly, in accordance with the Subcontract and the schedules established by the Owner or the Steel Fabricator, 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 Subcontract Work, (iv) interferes with, disrupts, or threatens to interfere with or disrupt the operations of the Steel Fabricator, the Owner, or any other laborer, materialman, supplier, subcontractor, or other person working on the Project, 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 required coverages for the full term required by the Subcontract, (viii) fails, upon demand, promptly to comply with any Subcontract provision relating to the removal of liens that have been placed upon the Project or relating to defense of lien claims, (ix) fails promptly to indemnify the Steel Fabricator against any payment bond claims asserted as a result of the Subcontractor's failure to pay its sub-subcontractors or suppliers, or (x) fails to carry out the Subcontract Work in a proper, workmanlike manner, and in full compliance with the specifications. This list is not intended to be exhaustive, and other breaches by the Subcontractor may also be material.

**12.1.2.** If the Subcontractor materially breaches the Subcontract, the Steel Fabricator may terminate the Subcontract for default upon five (5) calendar days' written notice to the Subcontractor. The termination may take effect five (5) calendar days after the date of the notice. However, the termination will not take effect if (1) the Subcontractor cures the breach to the Steel Fabricator's satisfaction before the effective date of the termination, and the Steel Fabricator so notifies the Subcontractor, or (2) with respect to breaches that cannot reasonably be cured within five (5) calendar days, the Subcontractor has, within the five (5) calendar days, taken meaningful steps towards curing the breach and presented the Steel Fabricator with a definite plan to cure the breach, which is acceptable to the Steel Fabricator. Upon such a termination, the Steel Fabricator 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. The Steel Fabricator may complete the Work itself or through others, by whatever method the Steel Fabricator deems expedient.

**12.1.3.** All sub-subcontracts or supply agreements which the Subcontractor enters into to carry out the Subcontract Work shall include a provision that the sub-subcontractor or supplier agrees its agreement may be assigned, upon the termination of the Subcontractor for default, to the Steel Fabricator. The Steel Fabricator 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 Subcontract Work has been fully completed and accepted by the Owner. At

such time, if the unpaid balance of the Subcontract Price exceeds the expense incurred by the Steel Fabricator 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 the unpaid balance of the Subcontract Price is less than the expense the Steel Fabricator 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 the Steel Fabricator.

**12.1.4.** If a termination for default, or any action taken pursuant to it, is determined to be wrongful, the termination shall be deemed to have been a termination for convenience, and the Subcontractor's sole remedy shall be as provided in Paragraph 12.3 of the Subcontract. In such cases, the Subcontractor shall not be entitled to recover the value of Subcontract Work that it had not performed as of the termination, anticipated profits upon such work, loss of business, or loss of profits on other projects or projects lost or foregone.

**12.2.** In the event of the termination of the Contract Documents between General Contractor and Steel Fabricator, this Subcontract may also be terminated, upon written notice of Steel Fabricator to Subcontractor, and in such case, the termination shall be treated as a termination for convenience in accordance with Paragraph 12.3.

### **12.3. Termination for Convenience.**

**12.3.1.** The Steel Fabricator may, upon written notice to the Subcontractor, terminate this Subcontract for any reason whatsoever. Termination for convenience may be exercised at the sole discretion of the Steel Fabricator, the exercise of which need not be reasonable, and regardless of whether the Subcontractor is or is not in default. Such a termination for the convenience of the Steel Fabricator will be effective immediately upon the Subcontractor's receipt of the notice of termination. The Subcontractor's sole and exclusive remedy for termination for convenience shall be payment of the following:

**12.3.1.1.** 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.

**12.3.1.2.** 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.

**12.3.1.3.** 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 the Owner.

**12.3.1.4.** Reasonable and documented costs the Subcontractor incurs in terminating any sub-subcontracts or rental or purchase agreements in effect at the time of the termination, without any mark-up for overhead or profit.

**12.3.2.** 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 nonconforming work. The Steel Fabricator 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.

## **13. RESPONSIBILITY FOR WORK**

**13.1.** The Subcontractor is responsible for the protection of the Subcontract Work, including all materials contained therein or stored at the Project site, until final acceptance thereof by the Owner. The Steel Fabricator shall not be responsible for damages to the Subcontractor's work caused by others, including other subcontractors.

**13.2.** The Subcontractor warrants, for a period of one year or more from substantial completion of the Project, or such longer time as the Contract Documents require, that the Subcontract Work is in full conformity with the Subcontract, and is free from defects in workmanship or materials. The Subcontractor agrees to make good, at its own expense and at the convenience of the Owner, any defect in material or workmanship which may occur or develop prior to the Steel Fabricator's release from responsibility to the Owner with respect to that work or material. In addition, with respect to the Subcontractor's Work, the Subcontractor hereby expressly assumes all warranty obligations and responsibilities assumed by the Steel Fabricator under the Contract Documents.

**13.3.** All guarantees and warranties herein provided shall extend to the Owner, and other awarding authority, and to Steel Fabricator. The foregoing shall be in addition to, and not in lieu of, any and all warranties and remedies required by the Contract Documents or provided by law.

## 14. TAXES AND PERMITS

**14.1.** Except as otherwise provided in the Contract Documents, the Subcontractor agrees to pay, comply with, and hold the Steel Fabricator harmless against (i) the payment of all contributions, taxes, duties, or premiums which may be payable by it under federal, state or local law arising out of the performance of this Subcontract, and (ii) all sales, use or other taxes of whatever nature leveled or assessed against the Owner, the Contractor, Steel Fabricator, or the Subcontractor arising out of this Subcontract, including any interest or penalties. The Subcontractor waives any and all claims for additional compensation because of any increase in the aforementioned contributions, taxes, duties or premiums, unless payment for such increases is specifically provided for in the Contract Documents.

**14.2.** The Subcontractor shall obtain and pay for all permits, licenses, fees and certificates of inspection necessary for the prosecution and completion of the Subcontract Work. It shall arrange for all necessary inspections and approvals by public officials, subject to coordination of same with the Steel Fabricator.

## 15. FACILITIES

**15.1. Use of the Contractor's Facilities.** The Subcontractor shall not use the Contractor's material, vehicles, equipment, gas, electricity, water or other services, appliances, or facilities without the prior written consent of the Contractor's superintendent. If such written consent is obtained, the Subcontractor shall pay the Contractor's reasonable charges upon demand. The Subcontractor agrees to use any of the Contractor's material, vehicles, equipment or other services, appliances, or facilities "as is" and at the Subcontractor's own sole risk. The Subcontractor agrees to defend, indemnify, and hold harmless the Contractor and Steel Fabricator from and against all claims, demands, liabilities, and expenses, including attorneys' fees, arising from or relating to such use by the Subcontractor. Steel Fabricator will not provide any special hoist, cranes, rigging, or elevator service for raising of Subcontractor's people or materials, unless prior agreement has been reached on such services.

**15.2. Use of Subcontractor's Facilities.** Subcontractor shall make available to Steel Fabricator and all of its subcontractors, for reasonable periods of time, equipment, ladders, scaffolding, etc., necessary for Steel Fabricator and said subcontractors to complete the work to be performed under the Subcontract.

## 16. LIENS AND CLAIMS

**16.1.** The Subcontractor agrees to execute and/or obtain from its subcontractors and suppliers, such further releases and/or waivers of lien and lien rights as may be required by the Contract Documents or requested by the Steel Fabricator. If liens are filed, despite this waiver, the Subcontractor shall cause them to be discharged, by posting a bond with the appropriate authorities or otherwise, within five calendar (5) days of notice. If such liens are not so discharged, the Steel Fabricator may avail itself of any remedies allowed by law or equity, including, without limitation, itself taking appropriate measures to remove the liens, and charging the resulting costs, including attorneys' fees, to the Subcontractor, withholding the amount of such costs from future payments to the Subcontractor, and/or terminating the Subcontract for default.

**16.2.** The Subcontractor shall immediately reimburse the Steel Fabricator for any amounts that are paid out under the Steel Fabricator's payment bond for the Project, if any, due to the Subcontractor's failure to make payments due, and/or for any costs, including attorneys' fees, that are incurred as a result of such failures by the Subcontractor. If the Steel Fabricator incurs, via indemnity obligations or otherwise, any costs or expenses whatsoever as a result of the Subcontractor's failure timely to pay amounts it owes to sub-subcontractors, suppliers, or others in connection with the Subcontract Work, the Subcontractor shall immediately reimburse the Steel Fabricator for such costs, including attorneys' fees.

## 17. OWNER'S APPROVAL OF SUBCONTRACTOR

**17.1.** This Subcontract may be contingent upon the Owner's approval of the Subcontractor, and materials and products being furnished by the Subcontractor. If, within five (5) business days after written notice to the Subcontractor of any disapproval by the Owner, the Subcontractor fails to overcome the Owner's objection, the Steel Fabricator shall have the right to cure the problem or to terminate the Subcontract for default or if the Owner disapproves of the Subcontractor, this Subcontract shall be deemed void *ab initio*.

## 18. SAFETY

**18.1.** The Subcontractor is being selected by the Steel Fabricator as a competent contractor with respect to the Subcontract Work. Therefore, the Subcontractor is required to perform its work in a safe manner. The Steel Fabricator is relying upon the skill and expertise of the Subcontractor to protect workers on the job site. The Subcontractor shall comply with all applicable local, state, or federal safety and health requirements, including OSHA as applicable. In accordance with state or federal requirements or both, 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 job 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. The Subcontractor shall also follow any safety rules that the Owner, Contractor, Steel Fabricator, or Contract Documents may impose, as well as any safety directions that may be issued by the Steel Fabricator. The Subcontractor also agrees to comply with any safety directions or rules reasonably issued by the Owner, Contractor, or the Steel Fabricator to prevent injury or assure compliance with applicable law, whether or not the Subcontractor agrees that those directions or rules are actually required in order to comply with applicable law, and to do so without demanding further compensation from the Steel Fabricator for such compliance.

**18.2. STEEL FABRICATOR HAS A ZERO TOLERANCE POLICY IN REGARD TO THE SAFETY OF WORKERS ON PROJECTS. SUBCONTRACTOR SHALL MEET OR EXCEED ALL REQUIREMENTS OF ALL FEDERAL, STATE AND LOCAL OCCUPATIONAL HEALTH AND SAFETY ADMINISTRATION (OSHA) REGULATIONS AND LAWS AT ALL TIMES WHILE PERFORMING WORK. A "COMPETENT PERSON" AS DEFINED BY OSHA SHALL BE EMPLOYED BY SUBCONTRACTOR AND SHALL BE ON SITE AT ALL TIMES WHEN WORK IS BEING PERFORMED IN ORDER TO ASSURE COMPLIANCE WITH REQUIRED SAFETY STANDARDS. FAILURE TO COMPLY WITH ALL OR PART OF THE REQUIREMENTS OF THIS PARAGRAPH CONSTITUTE GROUNDS FOR STEEL FABRICATOR TO STOP WORK UNTIL DEFICIENCIES ARE CORRECTED OR, IF REPEATED VIOLATIONS OCCUR, TO TERMINATE THIS SUBCONTRACT. COSTS, DIRECT OR INDIRECT, RESULTING FROM SUCH CORRECTIVE MEASURES CAUSED BY SUBCONTRACTOR SHALL BE BORNE SOLELY BY THE SUBCONTRACTOR.**

**18.3. Hazardous Materials.** Subcontractor shall comply in all respects with federal, state and local laws and regulations regarding the communication of hazards to all persons including, but not limited to, Subcontractor's employees and other employees at the site. Before introducing hazardous substances to the site, Subcontractor shall so advise the Steel Fabricator in writing, and shall provide to the Steel Fabricator and to other employers on site all information necessary to prevent risk of harm to any individual. Such information shall include, but not be limited to: the name(s) of any hazardous substances, material safety data sheets, and information regarding the labeling system in use, necessary protective measures and procedures for safe handling of the hazardous substance. Subcontractor shall provide supplemental information as necessary. In the event Subcontractor encounters on the site material which might reasonably be considered to contain polychlorinated biphenyl (PCB), asbestos or other hazardous material, the Subcontractor shall immediately stop work in the affected area and report the condition to Steel Fabricator both verbally and in writing. The work in the affected area shall resume either (a) when it has been determined that PCB, asbestos or other hazardous material is not present or (b) in compliance with applicable laws and regulations regarding PCB, asbestos or the identified hazardous material.

## **19. MISCELLANEOUS**

**19.1. All Work Covered by Subcontract.** If Subcontractor has commenced performance of its work hereunder and received from Steel Fabricator payments on account thereof prior to the execution of this Subcontract, it is specifically understood that all such work shall be included in the work to be performed under this Subcontract, and all such payments, as well as all future work to be performed hereunder, shall be in conformity with and subject to the terms and conditions hereunder.

**19.2. Clean-Up.** The Subcontractor shall at all times keep the Project site free from rubbish, debris, waste, or surplus materials resulting from its operations. The Subcontractor shall turn over the Subcontract Work in such condition as to permit the next succeeding or intervening work to be commenced without further cleaning. At the completion of the Subcontract Work, such work is to be clean and in a condition acceptable to the Owner. If the Subcontractor fails to comply with provisions of this Paragraph, the Steel Fabricator may perform such cleaning and charge the cost to the Subcontractor or deduct the cost from future payments otherwise due or to become due to the Subcontractor.

**19.3. Independent Contractor.** The Steel Fabricator has contracted with the Subcontractor, and the Subcontractor is acting at all times pursuant to this Subcontract, as an independent contractor.

**19.4. Separate Agreements with Others.** The Subcontractor shall not enter into any agreements with the Owner, Contractor, or Architect with respect to the Project without first obtaining the Steel Fabricator's written consent.

**19.5. Assignment.** This Subcontract and/or the proceeds from it shall not be sublet or assigned, in whole or in part, without the prior written consent of an officer of the Steel Fabricator.

**19.6. Premium Time.** Subcontractor shall bill no charges for premium time, with respect to the work included in the Subcontract except upon the prior written order of Steel Fabricator. Said order shall specify the amount of additional compensation or credit to be applied to the amount of this Subcontract. Field overtime authorized by Steel Fabricator is to be billed on a cost basis, including insurance and taxes. No allowance for overhead or profit will be approved.

**19.7. Applicable Law/Venue.** This Subcontract shall be governed by and construed in accordance with the laws of the Missouri, without regard to its conflict provisions.

**19.8. Severability and Waiver.** The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of the Steel Fabricator to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver of relinquishment of such term, covenant, conditions or right as respects further performance.

**19.9. Contract Interpretation.** The various documents comprising the Subcontract are to be treated as complementary. If there is a conflict among them, the Subcontractor shall promptly notify the Steel Fabricator and obtain a direction before proceeding. Unresolved conflicts shall be resolved as follows: this Subcontract and its Exhibits shall take precedence over other documents.

**19.10. Right of Recoupment or Offset.** The Subcontractor authorizes the Steel Fabricator to recoup or offset against amounts otherwise due and owing to the Subcontractor under the Subcontract, any and all amounts due to the Steel Fabricator from the Subcontractor, regardless of the origin of such obligations.

**19.11. Compliance With Immigration Laws.** Subcontractor agrees that it shall be obligated to comply with all requirements imposed on employers under IRCA with regard to every Subcontractor employee (“Contract Worker”) who will perform services for Subcontractor, where such service is provided in connection with Subcontractor’s performance of this Agreement. Subcontractor further agrees that Subcontractor is the “employer” as that term is defined at 8 C.F.R. Section 274a 1(g), and that Steel Fabricator is not the “employer” as so defined, with regard to such Contract Workers. In furtherance of its duties as employer under IRCA of Contract Workers directly employed by Subcontractor, Subcontractor agrees to do the following:

**19.11.1.** Complete USCIS Form 1-9 for all Contract Workers. Subcontractor agrees that it has sole responsibility for completing Form 1-9 for all Contract Workers who provide services as an employee of Subcontractor as part of Subcontractor’s performance of this Agreement and that it will do so and will further update such Form to the extent required by law. Subcontractor further warrants that all Subcontractor’s employees who complete Form 1-9 for such Contract Workers will be knowledgeable of all Form 1-9 requirements including, but not limited to, knowledge of which documents do and do not satisfy the requirements of Form 1-9, and that such employees will otherwise complete Form 1-9 in full compliance with IRCA.

**19.11.2.** Subcontractor’s Warranty of Employment Authorization for all Contract Workers. Subcontractor hereby warrants that no Contract Worker directly employed by Subcontractor will provide services pursuant to this Agreement until Subcontractor has completed Form 1-9 for such Contract Worker in the manner required by IRCA. Subcontractor further warrants that it has taken all necessary steps to comply with IRCA and that Subcontractor believes all Contract Workers directly employed by Subcontractor are authorized to work in the United States.

**19.11.3.** Indemnification and Hold Harmless. Subcontractor agrees that in any event any government agency determines that any Contract Worker directly employed by Subcontractor to perform duties under this Agreement is not authorized for employment in the United States, Subcontractor shall indemnify and hold harmless Owner, Steel Fabricator, Contractor, and any of Steel Fabricator’s agents, employees, officers, directors, trustees or other persons acting on Steel Fabricator’s behalf, from any liability incurred by Steel Fabricator, Contractor or Owner as a result of such determination. Such indemnification shall include, by way of example but not in any way limited to, any civil or criminal fines or penalties, assessed or alleged, and any costs incurred in responding to or participating in any government investigation, finding, recommendation, hearing, appeal, or any other proceeding, including attorney’s fees and costs.