



**JOHNSON-LANCASTER AND ASSOCIATES, INC.'S  
MASTER SUBCONTRACTOR TERMS AND CONDITIONS**

**I. Description of Work**

The Subcontractor shall perform and furnish all the work, labor, services, materials, plant, equipment, tools, scaffolds, appliances and other things necessary for the services and/or goods required Johnson-Lancaster and Associates, Inc.'s ("Johnson-Lancaster") Purchase Order, Contract and/or other Agreement (the "Agreement") with Subcontractor (the "Work") for and at the project location(s) detailed in Johnson-Lancaster's Purchase Order, Contract and/or other Agreement with Subcontractor (the "Project"), located on premises at the Project unless directed otherwise by Johnson-Lancaster (the "Premises"), as shown and described in and in strict accordance with the Plans, Specifications, General Conditions, Special Conditions and Addenda thereto prepared for the Project and with the terms and provisions of the Johnson-Lancaster's Contract with the Owner and/or General Contractor (the "General Contract").

**II. Plans & Specifications**

The Plans, Specifications, General Conditions, Special Conditions, Addenda and General Contract hereinabove mentioned, are available for examination by the Subcontractor at all reasonable times at the office of Johnson-Lancaster; all of the aforesaid, including these Terms and Conditions, being hereinafter sometimes referred to as the Contract Documents. The Subcontractor represents and agrees that it has carefully examined and understands these Terms and Conditions and the other Contract Documents, has investigated the nature, locality and site of the Work and the conditions and difficulties under which it is to be performed and that it enters into the Agreement on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of Johnson-Lancaster, or of the Owner, or of any of their respective officers, agents, servants, or employees.

**III. Contract Documents**

**a.** With respect to the Work to be performed and furnished by the Subcontractor hereunder, the Subcontractor agrees to be bound to Johnson-Lancaster by each and all of the terms and provisions of the General Contract and the other Contract Documents, and to assume toward Johnson-Lancaster all of the duties, obligations and responsibilities that Johnson-Lancaster by those Contract Documents assumes toward the Owner, and the Subcontractor agrees further that Johnson-Lancaster shall have the same rights and remedies as against the Subcontractor as the Owner under the terms and provisions of the General Contract and the other Contract Documents has against Johnson-Lancaster with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full.



b. The terms and provisions of the Agreement and these Terms and Conditions with respect to the Work to be performed and furnished by the Subcontractor hereunder are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of the General Contract and the other Contract Documents. The Agreement, these Terms and Conditions, the provisions of the General Contract and the other Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of the Agreement and/or these Terms and Conditions irreconcilably conflicts with a provision of the General Contract and the other Contract Documents, the provision imposing the greater duty or obligation on the Subcontractor shall govern.

#### **IV. Time of Performance & Completion**

The Subcontractor shall commence the Work when notified to do so by Johnson-Lancaster and shall diligently and continuously prosecute and complete the Work and coordinate the Work with the other work being performed on the Project, in accordance with those project schedules as may be issued from time to time during the performance of the Work and any other scheduling requirements listed in the Agreement or Contract Documents, so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of the Work or other work on the Project, and in such a manner as necessary or requested by Johnson-Lancaster from time to time to ensure that Johnson-Lancaster satisfies its obligations in a timely manner under the General Contract.

#### **V. Planning & Scheduling**

The Subcontractor shall participate and cooperate in the development of schedules and other efforts to achieve timely completion of the Work providing information for the scheduling of the times and sequence of operations required for its Work to meet Johnson-Lancaster's overall schedule requirements, shall continuously monitor the project schedule so as to be fully familiar with the timing, phasing and sequence of operations of the Work and of other work on the Project, and shall execute the Work in accordance with the requirements of the project schedule including any revisions thereto. Subcontractor shall abide by all requirements of the General Contract relating to the submission of schedule and other information related to the performance of Subcontractor's Work not less than fourteen (14) days prior to the time when Johnson-Lancaster is required to provide such materials to Owner under the General Contract, except where Johnson-Lancaster directs otherwise. Subcontractor shall, at no additional cost, provide updates, additional or further detailed schedules and other information as frequently and in whatever form Johnson-Lancaster may request, including but not limited to (1) manpower and cost loaded schedules; (2) information related to its operations as a whole, including but not limited to identifying lower tier subcontractors and suppliers and the status of payments to such subcontractors and suppliers; (3) unions and related benefit funds associated with labor used in the performance of the Work; (4) credit sources and banks providing financing or loans in connection with the performance of the Work or Subcontractor's operations as a whole and any covenants and requirements imposed upon Subcontractor in connection therewith and the status of Subcontractor's compliance with such covenants and requirements; and (5) the status of



orders, fabrication and delivery of materials and arrangements for the provision of labor. The foregoing information shall include names and contact information, and Subcontractor acknowledges and agrees that Johnson-Lancaster may contact any persons or entities as it deems necessary to verify or obtain such information.

## **VI. Records Retention**

Subcontractor shall establish and maintain a reasonable accounting system by which records are kept that enable Johnson-Lancaster to readily identify all of Subcontractor's expenses, costs, payments (including to its workers, subcontractors and suppliers, unions, and benefit funds), obligations, budgets, and other financial information related to the Work or the Agreement. Such records shall include, but not be limited to, all accounting records, written policies and procedures, subcontract files for all tiers, payment vouchers, ledgers, cancelled checks, contract amendments, change order information, insurance documents, and other similar information. Johnson-Lancaster shall have the right to audit, examine, and make copies of all such records (whether written, electronic or another format) as Johnson-Lancaster may determine, and Subcontractor shall facilitate and cooperate with Johnson-Lancaster efforts in this regard. Subcontractor shall impose similar obligations on its subcontractors and vendors to ensure that comparable records kept and Johnson-Lancaster has the right to audit, examine and copy those records.

## **VII. Delays by Subcontractor**

Should the progress of the Work or of the Project be delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect or act or failure to act of the Subcontractor or any of its officers, agents, servants, employees, subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to Johnson-Lancaster including legal fees and disbursements incurred by Johnson-Lancaster (whether incurred in defending claims arising from such delay or in seeking reimbursement and indemnity from the Subcontractor and its surety hereunder or otherwise) or to the Owner or any damages or additional costs or expenses for which Johnson-Lancaster or the Owner may or shall become liable, the Subcontractor and its surety shall and does hereby agree to compensate Johnson-Lancaster and the Owner for and indemnify them against all such costs, expenses, damages and liability.

## **VIII. Overtime**

**a.** If the progress of the Work or of the Project be delayed by any fault or neglect or act or failure to act of the Subcontractor or any of its officers, agents, servants, employees, subcontractors or suppliers, then the Subcontractor shall, in addition to all of the other obligations imposed by this Agreement upon the Subcontractor in such case, and at its own cost and expense, work such overtime as may be necessary to make up for all time lost in the completion of the Work and of the Project due to such delay. Should the Subcontractor fail to make up for the time lost by reason of such delay, Contractor shall have the right to cause other Subcontractors to work overtime and to take whatever other action it deems necessary to avoid delay in the completion of the Work and of the Project, and the cost and expense of such overtime and/or such other action shall be borne by the Subcontractor.



b. Johnson-Lancaster, if it deems necessary, may direct the Subcontractor to work overtime and, if so directed, the Subcontractor shall work said overtime and, provided that the Subcontractor is not in default under any of the terms or provisions of the Agreement, these Terms and Conditions or of any of the other Contract Documents and the direction to work overtime was not due in whole or in part to any fault or failure of Subcontractor, Johnson-Lancaster will pay the Subcontractor only for such actual additional wages paid, if any, at rates which have been approved by Johnson-Lancaster plus taxes imposed by law on such additional wages, plus workers' compensation insurance, liability insurance and levies on such additional wages if required to be paid by the Subcontractor to comply with Subcontractor's obligations under this Agreement. Subcontractor acknowledges that in the event that it may intend to pursue a claim of inefficiency, loss of productivity or other similar or related request for additional compensation, Subcontractor may rely only on evidence indicating the actual inefficiency, loss of productivity or other similar consequence as it occurred on the Project and agrees that no reports, analyses, data, industry or academic studies or any other evidence that do not exclusively rely on and pertain to the Work performed at the Project shall be used or in any way considered, in whole or in part, in connection with the resolution of such a claim, whether by Johnson-Lancaster or any forum for dispute resolution.

## **IX. Price**

The sum to be paid by Johnson-Lancaster, out of funds received from the owner, to the Subcontractor for the satisfactory performance and completion of the Work and of all of the duties, obligations and responsibilities of the Subcontractor under this Agreement and the other Contract Documents shall be set forth in the Agreement (the "Price") subject to additions and deductions as herein provided. The Price includes all Federal, State, County, Municipal and other taxes imposed by law and based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for and in connection with the Work, including but not limited to sales, use and personal property taxes payable by or levied or assessed against the Owner, Johnson-Lancaster or the Subcontractor. Where the law requires any such taxes to be stated and charged separately, the total price of all items included in the Work plus the amount of such taxes shall not exceed the Price.

## **X. Payments in General**

a. The obligation of Contractor to make a payment under the Agreement, whether a lump sum, progress or final payment, or for extras or change orders or delays to the Work, is subject to the express condition precedent of payment therefor by the Owner. If Johnson-Lancaster has provided payment or performance bonds or a combination payment and performance bond, the obligation of Johnson-Lancaster and its Surety under any of those bonds to make any payment (whether a progress payment or final payment) to a claimant on that bond is similarly subject to the express condition precedent of payment therefor by the Owner. Johnson-Lancaster shall have the right, at its sole discretion, to issue payments to Subcontractor by way of joint checks to Subcontractor and suppliers and/or vendors of Subcontractor, and Subcontractor agrees to cooperate fully in facilitating the making of such joint payments.



b. The Subcontractor agrees that, if and when requested to do so by Johnson-Lancaster, it shall furnish such information, evidence and substantiation as Johnson-Lancaster may require with respect to the nature and extent of all obligations incurred by the Subcontractor for or in connection with the Work, all payments made by the Subcontractor thereon, and the amounts remaining unpaid, to whom and the reasons therefor.

c. Final payment to the Subcontractor shall be made only with funds received by Johnson-Lancaster from the Owner, the Construction Lender or the Owner's Agent as final payment for Work under the General Contract. Final payment to Johnson-Lancaster by the Owner shall be an express condition precedent that must occur before Contractor shall be obligated to make final payment to the Subcontractor. In addition, final payment by Johnson-Lancaster to the Subcontractor shall not become due and payable until the following other express conditions precedent have been met: (1) the completion and acceptance of the Work by Johnson-Lancaster and the Architect; (2) provision by the Subcontractor of evidence satisfactory to Johnson-Lancaster that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished, or incurred for or in connection with the Work; (3) execution and delivery by the Subcontractor, in a form satisfactory to Johnson-Lancaster of a general release running to and in favor of Johnson-Lancaster and the Owner; and (4) complete and full satisfaction of all claims, demands and disputes, and all obligations and responsibilities of Subcontractor, arising out of or related to the Subcontract, including those as between Johnson-Lancaster and Subcontractor as well as those between Subcontractor and any third party. Should there be any such claim, obligation or lien or unsatisfied obligation or responsibility whether before or after final payment is made, the Subcontractor shall pay, refund or deliver to Johnson-Lancaster (1) all monies that Johnson-Lancaster and/or the Owner shall pay in satisfying, discharging or defending against any such claim, obligation or lien or any action brought or judgment recovered thereon and all costs and expenses, including legal fees and disbursements, incurred in connection therewith; and (2) such amounts as Johnson-Lancaster or Owner shall, in their sole discretion, determine to be an amount sufficient to protect Johnson-Lancaster and Owner therefrom (in lieu of payment of such amounts, Subcontractor may, at Owner's and Johnson-Lancaster's sole discretion, deliver a bond satisfactory to Johnson-Lancaster and Owner). Such refund and payment shall be made within ten (10) days of request by Johnson-Lancaster to Subcontractor for same. The final payment shall be due within forty (40) days after all of these express conditions precedent have been met, unless otherwise specified in the Agreement.

## **XI. Liens by Others**

If any claim or lien is made or filed with or against Johnson-Lancaster, the Owner, the Project, the Premises or the Project funds by any person claiming that the Subcontractor or any subcontractor or other person under subcontract to Subcontractor, or any person or entity employed or engaged by or through Subcontractor at any tier, has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if any such claim or lien is filed or presented, or



# JOHNSON-LANCASTER AND ASSOCIATES, INC.

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if Johnson-Lancaster, in good faith, believes that such a claim or lien may be filed or brought, or if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, Johnson-Lancaster or the Owner might become liable and which is chargeable to the Subcontractor, or if the Subcontractor or any subcontractor or other person under subcontract to Subcontractor, or any person or entity employed or engaged by or through Subcontractor at any tier causes damage to the Work or to any other work on the Project, or if the Subcontractor fails to perform or is otherwise in default under any of the terms or provisions of this Agreement, Johnson-Lancaster shall have the right (A) to retain from any payment then due or thereafter to become due an amount which it deems sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and (3) compensate Johnson-Lancaster and the Owner for and indemnify and hold them harmless against any and all losses, liability, damages, costs and expenses, including legal fees and disbursements, which may be sustained or incurred by either or both of them in connection therewith ; and (B) to demand that Subcontractor provide, within ten (10) days of Johnson-Lancaster's request therefore, proof to the satisfaction of Johnson-Lancaster and Owner that such non-payment, claim or lien has been fully satisfied, dismissed and discharged. Upon the failure of Subcontractor to fulfill the requirements of a demand issued by Johnson-Lancaster pursuant to subsection (B) above, Johnson-Lancaster may, in such manner as Johnson-Lancaster may in its sole discretion determine, secure the satisfaction, dismissal and discharge of such claim, by payment or otherwise, and Subcontractor shall within ten (10) days of demand therefore, be liable for and pay to Johnson-Lancaster all amounts (including legal fees and disbursements) incurred or suffered by Johnson-Lancaster or Owner arising out of or related thereto. Johnson-Lancaster shall, in addition, have the right to apply and charge against the Subcontractor so much of the amount retained as may be required for the foregoing purposes. Subcontractor further agrees to indemnify, hold harmless and defend Johnson-Lancaster and Owner, upon demand, for any and all such claims, liens, and the costs, expenses (including legal fees and disbursements), damages and liabilities arising out of or related thereto. Subcontractor acknowledges (1) that discharge of such liens or claims by bond imposes liability upon a surety and Johnson-Lancaster, and (2) that Johnson-Lancaster is not required to discharge such lien or claims by bond when exercising its rights hereunder. Subcontractor agrees that should there be any amounts due or which may become due to Subcontractor in connection with any other subcontracts between Johnson-Lancaster and Subcontractor or other obligations that Johnson-Lancaster may have to Subcontractor, Johnson-Lancaster shall be entitled to withhold payment under such other subcontract or obligations to the extent that Johnson-Lancaster believes that the unpaid balance of this Subcontract may not be adequate to satisfy Subcontractor's obligations to Johnson-Lancaster hereunder.



**XII. Effect of Payment**

**a.** No payment (final or otherwise) made under or in connection with the Agreement shall be conclusive evidence of the performance of the Work or of the Agreement, in whole or in part, and no such payment shall be construed to be an acceptance of defective, faulty or improper work or materials nor shall it release the Subcontractor from any of its obligations under the Agreement; nor shall entrance and use by the Owner constitute acceptance of the Work or any part thereof. The failure of Subcontractor to fully perform and satisfy any or all obligations set forth in these Terms and Conditions shall constitute a default, entitling Johnson-Lancaster to take action as described in these Terms and Conditions.

**b.** Subcontractor acknowledges and agrees that to the extent that payments received by Subcontractor include amounts for Work performed by subcontractors to Subcontractor or services or materials provided to Subcontractor by suppliers, vendors, workers employed by or through Subcontractor, all such payments received by Subcontractor shall be deemed to have been received by Subcontractor as trustee with those entitled to receive payment from Subcontractor as beneficiaries of such amounts, and Subcontractor shall hold such funds separately and utilize such amounts only for the purpose of making payment to these beneficiaries. In the event that Subcontractor subsequently determines that a beneficiary is not entitled to receipt of payment, Subcontractor shall return such unpaid funds to Johnson-Lancaster.

**XIII. Extension of Time & Delays**

**a.** Should the Subcontractor be delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of the Work by any cause including but not limited to any act, omission, neglect, negligence or default of Johnson-Lancaster or of anyone employed by Johnson-Lancaster or by any other contractor or subcontractor on the Project, or by the Architect, the Owner or their contractors, subcontractors, agents or consultants, or by damage caused by fire or other casualty or by the combined action of workers or by governmental directive or order in no way chargeable to the Subcontractor, or by any extraordinary conditions arising out of war or government regulations, or by any other cause beyond the control of and not due to any fault, neglect, act or omission of the Subcontractor, its officers, agents, employees, subcontractors or suppliers, then except where the General Contract has specific requirements at variance with the foregoing, in which case the requirements of the General Contract shall govern, the Subcontractor shall be entitled to an extension of time for a period equivalent to the time lost by reason of any and all of the aforesaid causes; provided, however, that the Subcontractor shall not be entitled to any such extension of time unless the Subcontractor (1) notifies Johnson-Lancaster in writing of the cause or causes of such delay, obstruction, hindrance or interference within forty eight (48) hours of the commencement thereof and (2) demonstrates that it could not have anticipated or avoided such delay, obstruction, hindrance or interference and has used all available means to minimize the consequences thereof. Subcontractor acknowledges that provision of such notice is an essential condition precedent to Subcontractor's rights in connection with any such delays, obstructive hindrances or interferences to Johnson-Lancaster's ability to fully identify, and expeditiously, address and avoid such cause or causes, and,



accordingly, Subcontractor expressly waives all rights with respect to any such cause or causes for which notice hereunder was not provided. Notwithstanding the foregoing, if the General Contract is at variance with granting such time extension, then the provisions of the General Contract shall control.

**b.** The Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation or damages for any delay, obstruction, hindrance or interference to the Work except to the limited extent that Johnson-Lancaster has actually recovered corresponding cost reimbursement, compensation or damages from the Owner under the Contract Documents for such delay, obstruction, hindrance or interference, and then only to the extent of the amount, if any, which Johnson-Lancaster on behalf of the Subcontractor, actually received from the Owner on account of such delay, obstruction, hindrance or interference. Notwithstanding any term or provision herein to the contrary, Subcontractor expressly waives and releases all claims or rights to recover lost profit (except for profit on work actually performed), recovery of overhead (including home office overhead), and any other indirect damages, costs or expenses in any way arising out of or related to the Agreement, including the breach thereof by Johnson-Lancaster, delays, charges, acceleration, loss of efficiency or productivity disruptions and interferences with the performance of the work.

**c.** It shall be an express condition precedent to any obligation on the part of Johnson-Lancaster to make payment of any such cost, reimbursement, compensation or damages to the Subcontractor hereunder that Johnson-Lancaster shall first be determined to be entitled to such compensation on behalf of the Subcontractor and then receive such payment from Owner, and Subcontractor expressly acknowledges that Johnson-Lancaster is not obligated or required to pursue Subcontractor claims as against Owner if Johnson-Lancaster, in its sole discretion, after review of Subcontractor's claim, has deemed the claim to lack merit in whole or in part.

**d.** The Subcontractor agrees that it shall contribute a fair and proportionate share of the costs of advancing the claims of the Subcontractor for delay, including but not limited to legal and other professional fees.

**XIV. Freight Charges & Shipments**

The Subcontractor in making or ordering shipments shall not consign or have consigned materials, equipment or any other items in the name of Johnson-Lancaster. Johnson-Lancaster is under no obligation to make payment for charges on shipments made by or to the Subcontractor but may, at its option, pay such charges, in which case the Subcontractor shall reimburse Johnson-Lancaster for the amount of such payments plus a service charge of twenty-five percent (25%) of the amount so paid.





**XV. Dimensions**

Notwithstanding the dimensions on the Plans, Specifications and other Contract Documents it shall be the obligation and responsibility of the Subcontractor to take such measurements as will ensure the proper matching and fitting of the Work covered by the Agreement with contiguous work.

**XVI. Contiguous Work**

Should the proper and accurate performance of the Work hereunder depend upon the proper and accurate performance of other work not covered by these Terms and Conditions and/or the Agreement, the Subcontractor shall carefully examine such other work, determine whether it is in fit, ready and suitable condition for the proper and accurate performance of the Work hereunder, use all means necessary to discover any defects in such other work, and before proceeding with the Work hereunder, report promptly any such improper conditions and defects to Johnson-Lancaster in writing and allow Johnson-Lancaster a reasonable time to have such improper conditions and defects remedied. Should Subcontractor fail to comply with the requirements of this Article, Subcontractor shall bear all costs incurred by Johnson-Lancaster, Owner and other subcontractors, and shall not be entitled to extensions of time and adjustments in Price, that could have been avoided by Subcontractor's compliance with the requirements of this Article.

**XVII. Interpretation of Plans & Specifications**

The Work hereunder is to be performed and furnished under the direction and to the satisfaction of both the Architect, Owner and Johnson-Lancaster. The decision of the Architect as to the true construction, meaning and intent of the Plans and Specifications shall be final and binding upon the parties hereto. Johnson-Lancaster will furnish to the Subcontractor such additional information and Plans as may be prepared by the Architect to further describe the Work to be performed and furnished by the Subcontractor and the Subcontractor shall conform to and abide by the same. The Subcontractor shall not make any changes, additions and/or omissions in the Work except upon written order of Johnson-Lancaster.

**XVIII. Change Orders, Additions & Deductions**

**a.** Johnson-Lancaster reserves the right, from time to time, whether the Work or any part thereof shall or shall not have been completed, to make changes, additions and/or omissions in the Work as it may deem necessary, upon written order to the Subcontractor. The value of the work to be changed, added or omitted shall be stated in said written order and shall be added to or deducted from the Price. The value of the work to be changed, added or omitted shall be determined by the lump sum or unit prices, if any, stipulated herein for such work. If no such prices are stipulated, such value shall be determined by whichever of the following methods or combination thereof Contractor may elect: (a) By adding or deducting a lump sum or an amount determined by a unit price agreed upon between the parties hereto. (b) By adding (1) the actual net cost to the Subcontractor of labor in accordance with the established rates, including required union benefits, premiums the Subcontractor is required to pay for workmen's compensation and liability insurance, and payroll taxes on such labor, (2) the actual cost to the Subcontractor of



materials and equipment and such other direct costs as may be approved by Contractor less all savings, discounts, rebates and credits, (3) an allowance of Five Percent (5%) for overhead on items (1) and (2) above, and (4) an allowance of Five Percent (5%) for profit on items (1), (2) and (3) above. Should the parties hereto be unable to agree as to the value of the work to be changed, added or omitted, the Subcontractor shall proceed with the work promptly under the written order of Johnson-Lancaster from which order the stated value of the work shall be omitted, and the determination of the value of the work, if not resolved in the normal course, shall be addressed pursuant to the dispute resolution procedures in accordance with these Terms and Conditions.

**b.** In the case of omitted work Johnson-Lancaster shall have the right to withhold from payments due or to become due to the Subcontractor an amount which, in Johnson-Lancaster's opinion, is equal to the value of such work until such time as the value thereof is determined by agreement or by the Architect as hereinabove provided.

**c.** All changes, additions or omissions in the Work ordered in writing by Johnson-Lancaster shall be deemed to be a part of the Work hereunder and shall be performed and furnished in strict accordance with all of the terms and provisions of these Terms and Conditions and the Agreement and the other Contract Documents. Subcontractor accepts the responsibility to keep its surety informed of all such modifications to its contract. The obligations of Subcontractor and Subcontractor's Surety shall not be reduced, waived or adversely affected by the issuance of such change orders, additions or deductions even if Subcontractor fails to inform Surety of same and Johnson-Lancaster shall not be required to obtain consent of the Surety to such modifications.

**d.** Subcontractor shall provide Johnson-Lancaster with written notice of any circumstance or direction given by Johnson-Lancaster which Subcontractor may regard as a change, addition and/or omission or which may otherwise serve as the basis for a request for an increase in Price or extension of time within five (5) days of the receipt of the direction or the occurrence of the event giving rise to such a request. Such written notice shall provide a full explanation of the circumstances or direction and the extent of the increase and extension sought, including a detailed breakdown and analysis supporting such request. Failure of the Subcontractor to provide such written notice shall constitute a waiver of Subcontractor's right to any such increase or extension.

**e.** Subcontractor acknowledges that the General Contract may include provisions whereby Johnson-Lancaster is required to provide notice, information, reports and analyses in the event that Johnson-Lancaster intends to pursue or which may affect Johnson-Lancaster right to an extension of time or increase in Johnson-Lancaster price to the Owner or the General Contractor, whether by way of change order or otherwise, and that the failure to provide such notice, information, reports and analyses may result in a waiver or forfeiture of the right to such an extension or increase. Accordingly, Subcontractor agrees that Subcontractor shall provide all such notices, information, reports and analyses to Johnson-Lancaster, in the same form, content



and manner as Johnson-Lancaster is required to provide to Owner or the General Contractor under the General Contract in the event that Subcontractor intends to pursue an extension of time or increase in Price. Subcontractor shall provide all such notices, information, reports and analyses to Johnson-Lancaster not later than three (3) business days prior to the time by which Johnson-Lancaster must submit corresponding notice, information, reports and analyses to Owner or the General Contractor so that Johnson-Lancaster can pursue like extensions and /or increases in Johnson-Lancaster's price from the Owner or the General Contractor. Subcontractor acknowledges that its failure to comply with the terms of this paragraph may result in the loss of or prejudice to Johnson-Lancaster's ability to receive adjustments and extensions time from Owner or the General Contractor. Subcontractor therefore agrees that it shall be deemed to have waived and forfeited all such rights in the event that it fails to provide notice, information, reports and analyses to Johnson-Lancaster as required by this Article. The terms and provisions of the paragraph are neither intended to relieve Subcontractor of the obligation to provide timely notices, information, reports and analyses, nor to extend shorter durations, required by the Contract Documents.

f. Notwithstanding the forgoing, the Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation, damages or extensions of time attributable to any changes, additions and/or omissions directed by Johnson-Lancaster except to the limited extent that Johnson-Lancaster has actually recovered corresponding cost reimbursement, compensation, damages or extensions of time from the Owner under the Contract Documents for such changes, additions and/or omissions and then only to the extent of the amount, if any, which Johnson-Lancaster on behalf of the Subcontractor, actually received from the Owner on account of such delay, obstruction, hindrance or interference. The preceding sentence shall not apply in a situation in which Johnson-Lancaster directed the performance of changes, additions and/or omissions by Subcontractor notwithstanding express language in the General Contract clearly indicating that Johnson-Lancaster is not entitled to recover a corresponding cost reimbursement, compensation, damages or extensions of time from the Owner or the General Contractor.

## **XIX. Inspection & Defective Work**

The Subcontractor shall at all times provide sufficient, safe and proper facilities for the inspection of the Work by Johnson-Lancaster, the Architect, and their authorized representatives in the field, at shops or at any other place where materials or equipment for the Work are in the course of preparation, manufacture, treatment or storage. The Subcontractor shall, within twenty-four (24) hours after receiving written notice from Johnson-Lancaster to that effect, proceed to take down all portions of the Work and remove from the premises all materials whether worked or unworked, which the Architect, Johnson-Lancaster, General Contractor, Owner or any of its design consultants shall condemn as unsound, defective or improper or as in any way failing to conform to these Terms and Conditions, the Agreement or the Plans, Specifications or other Contract Documents, and the Subcontractor, at its own cost and expense, shall replace the same with proper and satisfactory work and materials and make good all work damaged or destroyed by or as a result of such unsound, defective, improper or nonconforming work or materials or by the taking down, removal or replacement thereof.



**XX. Failure to Prosecute the Work/Default**

**a.** Should the Subcontractor at any time, whether before or after final payment or completion of the Work, refuse or neglect to supply a sufficiency of skilled workers or materials of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any act or omission the stoppage, impede, obstruct, hinder or delay of or interference with or damage to the work of Johnson-Lancaster or of any other contractors or subcontractors on the Project, or fail in the performance of any of the terms and provisions of these Terms and Conditions, the Agreement or of the other Contract Documents, or should the Architect, Johnson-Lancaster, General Contractor, Owner or any of its design consultants, determine that the Work or any portion thereof is not being performed in accordance with the Contract Documents, or should there be filed by or against the Subcontractor a petition in bankruptcy or for an arrangement or reorganization, or should the Subcontractor become insolvent or be adjudicated a bankrupt or go into liquidation or dissolution, either voluntarily or involuntarily or under a court order, or make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency, then in any of such events, each of which shall constitute a default hereunder on the Subcontractor's part, Johnson-Lancaster shall have the right, in addition to any other rights and remedies provided by this Agreement and the other Contract Documents or by law, at one time or in phases at Johnson-Lancaster's discretion, after three (3) days written notice to the Subcontractor mailed or delivered to the last known address of the latter, (a) to perform and furnish through itself or through others any such labor or materials for all or any portion of the Work and to deduct the cost thereof from any monies due or to become due to the Subcontractor under this Agreement, (b) to terminate the employment of the Subcontractor for all or any portion of the Work, and/or (c) enter upon the premises and take possession, for the purpose of completing all or any portion of the Work,, of all materials, equipment, scaffolds, tools, appliances and other items thereon as Johnson-Lancaster may select, all of which the Subcontractor hereby authorizes Johnson-Lancaster to employ and/or communicate with any person or persons in connection with the completion of the Work and/or to provide all the labor, services, materials, equipment and other items required therefor.

**b.** In case of Johnson-Lancaster taking action under this Article, including termination of the employment of the Subcontractor, the Subcontractor shall not be entitled to receive any further payment under the Agreement until the Work shall be wholly completed to the satisfaction of Johnson-Lancaster, the General Contractor, Owner and the Architect and shall have been accepted by them, at which time, if the unpaid balance of the amount to be paid under this Agreement shall exceed the cost and expense incurred by Johnson-Lancaster in completing the Work, such excess shall be paid by Johnson-Lancaster to the Subcontractor; but if such cost and expense shall exceed such unpaid balance, then the Subcontractor and its surety, if any, shall pay the difference to Johnson-Lancaster. Such cost and expense shall include, not only the cost of completing the Work to the satisfaction of Johnson-Lancaster, the General Contractor and the Architect and of performing and furnishing all labor, services, materials, equipment, and other items required therefore, but also all losses, damages, costs and expenses, (including legal fees and disbursements incurred in connection with procurement, in defending claims arising from



such default and in seeking recovery of all such cost and expense from the Subcontractor and/or its surety), and disbursements sustained, incurred or suffered by reason of or resulting from the Subcontractor's default. Should Johnson-Lancaster take action by effectuating the provisions of this paragraph, and should it subsequently be determined that such action, including a termination effectuated by the terms of this Article, was improper, such termination shall be treated as a termination for convenience. Subcontractor hereby transfers and assigns to Johnson-Lancaster the all rights under agreements that Subcontractor may have with subcontractors to Subcontractor, suppliers and vendors in connection with the Work or the Project, which transfers and assignments may be accepted at Johnson-Lancaster's sole discretion in the event that Johnson-Lancaster as taken action under this Article. Subcontractor agrees to fully cooperate with Johnson-Lancaster in pursuing Johnson-Lancaster's rights hereunder and that Johnson-Lancaster shall not be required to defer or delay action taken pursuant to this Article during the pendency of any review, investigation, evaluation or assessment by Subcontractor or its surety.

**c.** It is recognized that if the Subcontractor institutes or has instituted against it a case under Title 11 of the United States Code (Bankruptcy Code), such event could impair or frustrate the Subcontractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Johnson-Lancaster shall be entitled to request of Subcontractor or its trustee or other successor adequate assurances of future performance. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Johnson-Lancaster, in addition to any other rights and remedies provided by these Terms and Conditions, the Agreement or by law, to terminate the Agreement. Pending receipt of adequate assurances of performance and actual performance in accordance herewith, Johnson-Lancaster shall be entitled to perform and furnish through itself or through others any such labor, materials or equipment for the Work as may be necessary to maintain the progress of the Work and to deduct the cost thereof from any monies due or to become due to the Subcontractor under this Agreement. In the event of such bankruptcy proceedings, the Agreement shall terminate if the Subcontractor rejects the Agreement or if there has been a default and the Subcontractor is unable to give adequate assurance that it will perform as provided in these Terms and Conditions and the Agreement or otherwise is unable to comply with the requirements for assuming the Agreement under the applicable provisions of the Bankruptcy Code.

**d.** Subcontractor, in addition to any other rights available to Johnson-Lancaster hereunder, agrees to indemnify, hold harmless and defend Johnson-Lancaster from and against any and all claims, demands, suits, damages, judgments, liabilities, costs and expenses (including legal fees and disbursements) arising out of or related to Subcontractor's breach of any term of the Agreement.



**XXI. Loss or Damage to Work**

Johnson-Lancaster shall not be responsible for any loss or damage to the Work to be performed and furnished under this Agreement, however caused, until after final acceptance thereof by Johnson-Lancaster, the General Contractor and the Architect, nor shall Johnson-Lancaster be responsible for loss of or damage to materials, tools, equipment, appliances or other personal property owned, rented or used by the Subcontractor or anyone employed by it in the performance of the Work, however caused.

**XXII. Cleaning Up**

The Subcontractor shall, at its own cost and expense, (1) keep the Premises free at all times from all waste materials, packaging materials and other rubbish accumulated in connection with the execution of its Work by collecting and depositing said materials and rubbish in locations or containers as designated by Johnson-Lancaster or the General Contractor from which it shall be removed by Johnson-Lancaster or the General Contractor from the Premises without charge, (2) clean and remove from its own Work and from all contiguous work of others any soiling, staining, mortar, plaster, concrete or dirt caused by the execution of its Work and make good all defects resulting therefrom (3) at the completion of its Work in each area, perform such cleaning as may be required to leave the area "broom clean", and (4) at the entire completion of its Work, remove all of its tools, equipment, scaffolds, shanties and surplus materials. Should the Subcontractor fail to perform any of the foregoing to Johnson-Lancaster's satisfaction, Johnson-Lancaster shall have the right to perform and complete such work itself or through others and charge the cost thereof to the Subcontractor.

**XXIII. Ethics & Compliance**

The Subcontractor shall obtain and pay for all necessary permits and licenses pertaining to the Work and shall comply with all Federal, State, Municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements, including but not limited to those relating to safety, storm water management, discrimination in employment, fair employment practices, immigration laws or equal employment opportunity, and whether or not provided for by the Plans, Specifications, General Conditions, or other Contract Documents, without additional charge or expense to Johnson-Lancaster and shall also be responsible for and correct, at its own cost and expense, any violations thereof resulting from or in connection with the performance of its Work. Each requisition for payment shall constitute a representation and warranty that Subcontractor is in compliance with applicable law. The Subcontractor shall at any time upon demand furnish such proof as Contractor may require showing such compliance and the correction of such violations. The Subcontractor agrees to save harmless and indemnify Contractor from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, costs and expenses, including legal fees and disbursements, caused or occasioned directly or indirectly by the Subcontractor's failure to comply with any of said laws, ordinances, rules, regulations, standards, orders, notices or requirements or to correct such violations therefore resulting from or in connection with the performance of Work.



**XXIV. Labor to be Employed**

a. The Subcontractor shall not employ workers, means, materials or equipment or assign work in any manner which may cause strikes, work stoppages or any disturbances by workers employed by the Subcontractor, Johnson-Lancaster or other contractors or subcontractors on or in connection with the Work or the Project or the location thereof. The Subcontractor agrees that all disputes as to jurisdiction of trades shall be adjusted in the manner or by a process that Johnson-Lancaster may require, including, if Johnson-Lancaster so requires, in accordance with any plan for the settlement of jurisdictional disputes to which Johnson-Lancaster may be bound in connection with the Project which may be in effect either nationally or in the locality in which the Work is being done. Subcontractor agrees that it shall assign work consistent with any such plan and shall be bound and abide by all such adjustments and settlements of jurisdictional disputes, provided that the provisions of this Article shall not be in violation of or in conflict with any provisions of law applicable to the settlement of such disputes. Should the Subcontractor fail to carry out or comply with any of the foregoing provisions, Johnson-Lancaster shall have the right, in addition to any other rights and remedies provided by these Terms and Conditions, the Agreement or the other Contract Documents or by law, after three (3) days written notice mailed or delivered to the last known address of the Subcontractor, to terminate the 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, in the same manner, to the same extent and upon the same terms and conditions as set forth in Article XX of this Agreement.

b. The Project or General Contract may be subject to Federal prevailing wage requirements, such as the Davis-Bacon Act or the Walsh-Healy Act, or other similar laws, statutes or requirements at a state or local level. Subcontractor shall strictly comply with all applicable prevailing wage laws, statutes or requirements and shall maintain such records as necessary to establish the amount of wages and other compensation paid to workers in connection with the Project and shall submit to Johnson-Lancaster, as a condition for payment, certified payrolls in the form prescribed by any such laws, regulations or requirements. Subcontractor expressly agrees that the indemnification obligations set forth in these Terms and Conditions and the Agreement shall apply to any violations by Subcontractor of any such laws, statutes or regulations and the failure to maintain records as required herein.

**XXV. Taxes & Contributions**

The Subcontractor for the Price herein provided, hereby accepts and assumes exclusive liability for and shall indemnify, protect and save harmless Johnson-Lancaster, the General Contractor and the Owner from and against the payment of: (1) All contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the Unemployment Insurance Law of any State, Federal Social Security Act, Federal, State, County and/or Municipal Tax Withholding Laws, or any other law, measured upon the payroll of or required to be withheld from employees, by whomsoever employed, engaged in the Work to be performed and furnished under this Agreement; (2) All sales, use, personal property and other taxes (including interest and penalties thereon) required by any Federal, State, County, Municipal or



other law to be paid or collected by the Subcontractor or any of its subcontractors or vendors or any other person or persons acting for, through or under it or any of them, by reason of the performance of the Work or the acquisition, ownership, furnishing or use of any materials, equipment, supplies, labor, services or other items for or in connection with the Work; and (3) All pension, welfare, vacation, annuity and other union benefit contributions payable under or in connection with labor agreements with respect to all persons, by whomsoever employed, engaged in the Work to be performed and furnished under the Agreement. In furtherance of, and in addition to the agreements, duties obligations and responsibilities of the Subcontractor with respect to the payment of sales, use, personal property and other taxes set forth in these Terms and Conditions and the Agreement, the Subcontractor agrees to reimburse and otherwise indemnify Johnson-Lancaster, General Contractor and/or the Owner for any expenses, including legal fees and litigation arising from, or related to the Subcontractor's failure to pay any sales, use, personal property or other taxes based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for or in connection with the Work.

## **XXVI. Patents**

The Subcontractor hereby agrees to indemnify, protect and save harmless Johnson-Lancaster, General Contractor and the Owner from and against any and all liability, loss or damage and to reimburse Johnson-Lancaster, General Contractor and the Owner for any expenses, including legal fees and disbursements, to which Johnson-Lancaster, General Contractor and the Owner may be put because of claims or litigation on account of infringement or alleged infringement of any letters patent or patent rights by reason of the Work or materials, equipment or other items used by the Subcontractor in its performance.

## **XXVII. Disputes**

- a.** These Terms and Conditions and the Agreement shall be governed by the laws of the State of Florida.
- b.** Johnson-Lancaster and Subcontractor agree that any and all dispute will be adjudicated in a court of competent jurisdiction in Pinellas County, Florida.
- c.** Furthermore, the Subcontractor expressly agrees to waive its right to trial by jury in any dispute involving Johnson-Lancaster and or Johnson-Lancaster's surety.
- d.** Subcontractor further agrees that in the event that it suffers damages, cost or expenses or otherwise intends to pursue a recovery that arises out of or relates to the performance of work by another subcontractor to or under Johnson-Lancaster, Subcontractor's sole remedy shall be as against that responsible subcontractor and Subcontractor shall not pursue a remedy from Johnson-Lancaster.





e. Subcontractor shall continue with the diligent performance of Work pursuant to this Subcontract and follow and abide by directions and instructions issued by Johnson-Lancaster during the pendency of any dispute, including dispute resolution procedures, ADR procedures, arbitration or litigation.

f. All claims, suit or demands by Subcontractor as against Johnson-Lancaster, General Contractor or Owner shall be brought within the earlier of one (1) year following Subcontractor's achieving substantial completion for the Subcontractor's Work or within one year of Johnson-Lancaster's notice of default in the event that Johnson-Lancaster has taken any action in accordance with Article XX, and Subcontractor hereby agrees that all relevant statutes of limitations shall be deemed reduced to such time period, to the fullest extent permitted by law.

## **XXVIII. Mechanics' Liens & Claims**

a. Subcontractor acknowledges that its rights to remedies pursuant to Florida's Construction Lien Law shall be governed, to the fullest extent permitted by law, by this clause. Subcontractor agrees that its rights to pursue a lien shall be limited to that portion of its subcontract price which is unpaid and due at the time of filing alien claim under the terms of this subcontract. Subcontractor agrees that it shall not file liens for any sum which is not due hereunder and specifically agrees and covenants that it will not file liens for any sums not within the contract price or written modifications thereto nor shall it file liens for such sums as it may contend are due as damages by reason of delays or other such claims unless such sums are agreed due to Subcontractor by written contract modification. Subcontractor agrees that its lien rights, whatever they may be, are reduced by each payment made to Subcontractor by Contractor or any other party on behalf of Contractor.

b. Subcontractor acknowledges that a claim lien filed by it may be disruptive of Project finances and could have an adverse impact on Johnson-Lancaster's relationships with the General Contractor and/or Owner and other subcontractors. Therefore, Subcontractor further agrees that if it files a lien claim which is not permitted by law, or which contains claims where are not permissible hereunder or pursuant to law, or which is negligently or purposefully overstated, Johnson-Lancaster shall be entitled to receive from Subcontractor all its damages arising therefrom and further be held harmless and indemnified by Subcontractor from all claims of the General Contractor, Owner and other subcontractors arising therefrom. The foregoing shall be in addition to all rights and remedies provided by law.

c. If any subcontractor, laborer, materialman or supplier of the Subcontractor or any other person directly or indirectly acting for, through or under it or any of them files or maintains a lien or claim, whether a mechanics' lien or an attested account or otherwise, a mechanic's lien or claim against the Project or Premises or any part thereof or any interests therein or any improvements thereon or against any monies due or to become due from the Owner or General Contractor to Johnson-Lancaster or from Johnson-Lancaster to the Subcontractor, for or on account of any work, labor, services, materials, supplies, equipment or other items performed or furnished for or in connection with the Work or under any change order or supplemental



agreement for extra or additional work in connection with the Project, the Subcontractor agrees to cause such liens and claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from the date of the filing thereof, and upon its failure to do so Johnson-Lancaster shall have the right, in addition to all other rights and remedies provided under these Terms and Conditions, the Agreement and the other Contract Documents or by law, to cause such liens or claims to be satisfied, removed or discharged by whatever means Johnson-Lancaster chooses, at the entire cost and expense of the Subcontractor (such cost and expense to include legal fees and disbursements). The Subcontractor agrees to indemnify, protect and save harmless Johnson-Lancaster, General Contractor and the Owner from and against any and all such liens and claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees and disbursements, which Johnson-Lancaster, General Contractor and/or the Owner may sustain or incur in connection therewith.

**XXIX. Assignment & Subletting**

To the fullest extent permitted by law, Subcontractor agrees that it shall not assign, sell, transfer, delegate or encumber any rights, duties or obligations arising under the Agreement including, but not limited to, any right to receive payments hereunder, without the prior written consent of Johnson-Lancaster in its sole discretion and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. In the event Subcontractor assigns, sells, encumbers or otherwise transfers its right to any monies due or to become due under the Agreement as security for any loan, financing or other indebtedness (hereafter "Assignment"), notification to Johnson-Lancaster of such Assignment must be sent by certified mail, return receipt requested, to the Purchasing Manager in charge of the business unit responsible for the construction of the Project and the Assignment shall not be effective as against Johnson-Lancaster until Johnson-Lancaster provides its written consent to such Assignment. Subcontractor agrees that any such Assignment shall not relieve the Subcontractor of any of its agreements, duties, responsibilities or obligations under the Agreement and the other Contract Documents and shall not create a contractual relationship or a third party beneficiary relationship of any kind between Johnson-Lancaster and such assignee or transferee. Subcontractor further agrees that all of Johnson-Lancaster's defenses and claims arising out of the Agreement with respect to such Assignment are reserved unless expressly waived in writing by a duly authorized corporate officer. Subcontractor hereby agrees to indemnify and hold harmless Johnson-Lancaster from and against any and all loss, cost, expense or damages Johnson-Lancaster, the General Contractor or Owner has or may sustain or incur in connection with such Assignment.



**XXX. Termination for Convenience**

Johnson-Lancaster shall have the right at any time and for any reason, by written notice to the Subcontractor, to terminate the Agreement without cause and require the Subcontractor to cease work hereunder. In the event of such a termination for convenience, the Subcontractor shall be entitled to payment pursuant to the terms of the Agreement only for all Work performed as of the date of termination, together with reasonable costs of demobilization and such other reasonable costs as may be encountered by the Subcontractor and directly attributable to such termination provided that such amount shall be reduced by all amounts for which Subcontractor is liable or responsible hereunder. However, the Subcontractor shall only be entitled to profit on that portion of the Work actually performed and approved for payment to the date of termination together with retainages held upon payments made prior thereto. Subcontractor waives any claim for loss of anticipated profits or other damages in the event Johnson-Lancaster exercises this clause.

**XXXI. Guarantees**

The Subcontractor hereby guarantees the Work to the full extent provided in the Plans, Specifications, General Conditions, Special Conditions and other Contract Documents. The Subcontractor shall expeditiously remove, replace and/or repair at its own expense and at the convenience of the Owner any faulty, defective or improper Work, materials or equipment existing or discovered within one (1) year from the date of the acceptance of the Project as a whole by the Architect and the Owner or for such longer period as may be provided in the Plans, Specifications, General Conditions, Special Conditions or other Contract Documents. Without limiting the generality of the foregoing, the Subcontractor warrants to the Owner, the Architect and Johnson-Lancaster, and each of them, that all materials and equipment furnished under this Agreement will be of first class quality and new, unless otherwise required or permitted by the other Contract Documents, that the Work performed pursuant to the Agreement will be free from defects and that the Work will strictly conform with the requirements of the Contract Documents. Work not conforming to such requirements, including substitutions not properly approved and authorized, shall be considered defective. All warranties contained in the Agreement and in the Contract Documents shall be in addition to and not in limitation of all other warranties or remedies required and/or arising pursuant to applicable law. Failure of Subcontractor to honor and satisfy the foregoing and any other warranties or guarantees required of the Subcontractor under the Contract Documents, shall constitute a default by Subcontractor.

**XXXII. Accident Prevention & Other Policies**

The Subcontractor agrees that the prevention of accidents to workmen and property engaged upon or in the vicinity of the Work is its responsibility. The Subcontractor agrees to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as shall be applicable to the Work, including, among others, the Federal Occupational Safety and Health Act of 1970 and the Clean Water Act, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with the safety standards established or imposed during the progress of the Work by Johnson-Lancaster. When so ordered, the Subcontractor shall stop any part of the



Work which Johnson-Lancaster deems potentially unsafe, noncompliant or in violation until corrective measures satisfactory to Johnson-Lancaster have been taken, and the Subcontractor agrees that it shall not have nor make any claim for damages growing out of such stoppages. Should the Subcontractor neglect to take such corrective measures, Johnson-Lancaster may do so at the cost and expense of the Subcontractor and may deduct the cost thereof from any payments due or to become due to the Subcontractor. Failure on the part of Johnson-Lancaster to stop unsafe practices shall in no way relieve the Subcontractor of its responsibility therefor.

### **XXXIII. Hazardous Substances**

In the event that hazardous substances of a type of which an employer is required by law to notify its employees are being used or stored on the site by the Subcontractor, the Subcontractor's subcontractors and anyone directly or indirectly employed or otherwise retained by them or either of them, the Subcontractor shall immediately provide written notice of the chemical composition thereof (including, without limitation, a copy of the applicable Material Safety Data Sheet) to Johnson-Lancaster in sufficient time to permit compliance with such laws by Johnson-Lancaster, other subcontractors and other employers on the site. In the event that the Subcontractor encounters on the site material reasonably believed to be hazardous substances (including, without limitation, asbestos or polychlorinated biphenyl) which has not been rendered harmless, the Subcontractor shall immediately stop Work in the area affected and immediately report the condition to Johnson-Lancaster in writing. Work in the affected area shall resume when such hazardous substances have been rendered harmless or removed as determined by Johnson-Lancaster in its sole and absolute discretion. To the extent of Subcontractor's responsibilities hereunder, Subcontractor does indemnify and save harmless Johnson-Lancaster from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, cost and expenses, including legal fees and disbursements, caused or occasioned directly or indirectly by the Subcontractor in regard to such hazardous substances.

### **XXXIV. Assumption of Liability & Indemnity**

**a.** Throughout this Agreement, the "Indemnified Party (ies)" means Johnson-Lancaster, the General Contractor, the Owner, any party required to be indemnified pursuant to the General Contract, and any of their respective officers, agents, servants, or employees, and affiliates, parents and subsidiaries. The Subcontractor hereby assumes the entire responsibility and liability for any and all actual or potential damage or injury of any kind or nature whatsoever (including death, business interruption or loss of use resulting therefrom) to all persons and entities, whether employees of the Subcontractor or any tier of the Subcontractor or otherwise, or to all property or as a result of a perceived risk of such damage or injury (including actions taken to avoid or contain such actual or potential damage or injury, whether required or incurred by a public authority or otherwise); caused by, resulting from, arising out of or occurring in connection with the execution of the Work, or in preparation for the Work, or any extension, modification, or amendment to the Work by change order or otherwise. Should any claims for such actual or potential damage or injury (including death resulting therefrom) be made or asserted, whether or not such claims are based upon an Indemnified Party's alleged active or



passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of an Indemnified Party, the Subcontractor agrees to indemnify and save harmless the Indemnified Party from and against any and all such claims and further from and against any and all loss, cost, expense, liability, damage, penalties, fines or injury, including legal fees and disbursements, that the Indemnified Party may directly or indirectly sustain, suffer or incur as a result thereof and the Subcontractor agrees to and does hereby assume, on behalf of the Indemnified Party, the defense of any action at law or in equity which may be brought against the Indemnified Party upon or by reason of such claims and to pay on behalf of the Indemnified Party, upon demand, the amount of any judgment that may be entered against the Indemnified Party in any such action. In the event that any such claims, loss, cost, expense, liability, damage, penalties, fines or injury arise or are made, asserted or threatened against the Indemnified Party, Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor an amount sufficient in its judgment to protect and indemnify the Indemnified Party from and against any and all such claims, loss, cost, expense, liability, damage, penalties, fines or injury, including legal fees and disbursements, or Contractor in its discretion may require the Subcontractor to furnish a surety bond satisfactory to Contractor guaranteeing such protection, which bond shall be furnished by the Subcontractor within five (5) days after written demand has been made therefor.

**b.** To the extent Subcontractor's indemnification obligation hereunder requires Subcontractor to indemnify Johnson-Lancaster for liability for damages to persons or property caused, in whole or in part, by any act, omission or default of Johnson-Lancaster arising from this Agreement or from the performance of the Agreement, such indemnification obligation shall not exceed the combined amount of the Price of the Agreement and the limits of Subcontractor's General Liability Insurance required under the Agreement, which sum Johnson-Lancaster and Subcontractor hereby acknowledge bears a reasonable commercial relationship to the Agreement in compliance with Section 725.06(1), Florida Statutes. Contractor and Subcontractor further acknowledge that this Indemnification Agreement and the limitation set forth herein shall be deemed to be incorporated in, and to be a part of, the Contract Documents governing the Work, including all bid documents and specifications.

**c.** In the event this Agreement pertains to a project of a public agency as contemplated by Section 725.06(2), Florida Statutes, Subcontractor's indemnification obligations hereunder shall require subcontractor to indemnify and hold harmless Johnson-Lancaster and Johnson-Lancaster's officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of Subcontractor and persons employed or unutilized by Subcontractor in the performance of the Work.



**d.** In furtherance to but not in limitation of the indemnity provisions in this Agreement, Subcontractor hereby expressly and specifically agrees that its obligation to indemnify, defend and save harmless as provided in these Terms and Conditions and the Agreement shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under worker's compensation laws.

**e.** IN THE EVENT THAT THE LAW OF THE STATE IN WHICH THE PROJECT IS LOCATED (OR OTHER APPLICABLE LAW) LIMITS THE INDEMNITY OBLIGATIONS OF THE SUBCONTRACTOR, THEN THE INDEMNITY OBLIGATIONS OF THE SUBCONTRACTOR SHALL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND THIS ARTICLE SHALL BE CONSTRUED TO CONFORM TO SUCH LAW.

**XXXV. Insurance**

**a.** Required Insurance

**i.** Before commencing the Work, the following insurance coverages from insurance companies satisfactory to Johnson-Lancaster shall be in place and maintained until completion and final acceptance of the Work:

**1.** WORKERS' COMPENSATION in accordance with laws of the State in which the Work is situated, and EMPLOYERS' LIABILITY INSURANCE in the amount of \$1,000,000.

**2.** COMMERCIAL GENERAL LIABILITY INSURANCE INCLUDING COMPLETED OPERATIONS, CONTRACTUAL LIABILITY INSURANCE AGAINST THE LIABILITY ASSUMED HEREINABOVE, and including INDEPENDENT CONTRACTOR'S LIABILITY INSURANCE if the Subcontractor sublets to another all or any portion of the Work, Personal Injury Liability, Broad Form Property Damage (including completed operations), and Explosion, Collapse and Underground Hazards, with the following minimum limits:(Coverage shall be equivalent to current ISO Occurrence Form). No exclusions or restrictions for Crane usage will be permitted.

**a.** \$2,000,000/Occurrence

**b.** \$2,000,000 General Aggregate

The above insurance coverages shall be provided by insurance companies selected by the Subcontractor. Contractor shall have the right, without limitation, to reject any insurance company selected by Subcontractor that has an A.M. Best rating of less than A or Standard and Poor's rating of less than AA or a Moody's rating of less than Aa. This insurance coverage shall include Products and Completed Operations coverage which Subcontractor agrees to maintain for a period equal to the statute of repose in the state in which the project is located. Subcontractor further agrees that it shall require each of its sub-subcontractors to provide the



above insurance coverages subject to the terms and conditions set forth below. All costs are included in the Price and are to be paid by the Subcontractor.

3. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE covering all owned, non-owned and hired automobiles used in connection with the Work, with the following minimum limits:
  - a. Combined Single Limit \$1,000,000/accident
4. ALL RISK CONTRACTOR'S EQUIPMENT INSURANCE COVERAGE shall be provided by all Subcontractors utilizing a crane or other equipment in connection with the performance of the Work and insured to the full value of equipment.

**b. Insurance Conditions**

- i. The following terms and conditions are applicable to all insurance:
  1. Before commencing the Work, the Subcontractor shall furnish a certificate(s), satisfactory to Johnson-Lancaster from each insurance company showing that the above insurances are in force, stating policy numbers, dates of expiration, and limits of liability thereunder, and further providing that should any of the described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Subcontractor shall advise Contractor of the amount of any Deductible or Self-Insured Retention that exists on any policies of insurance on the face of the certificates provided. Subcontractor shall be responsible for and agrees to pay and/or reimburse Contractor for any such Deductible or Self-Insured Retention.
  2. The Subcontractor shall name the Indemnified Parties and such other entities as may be reasonably requested as additional insureds under the policies of insurance listed in paragraph **a. Required Insurance** maintained by the Subcontractor (with the exception of Workers Compensation insurance), whether during the performance of the Work or any time thereafter. The coverage to be provided to the additional insureds shall be for all liability arising out of the Work. Subcontractor will submit a certificate of insurance and a copy of endorsements to the insurance policies listing all parties required to be named by Subcontractor as additional insureds. Subcontractor hereby waives all rights of recovery from Johnson-Lancaster and the Indemnified Parties, including but not limited to rights of subrogation, with respect to any matter, claim or suit that is required to be covered by insurance to be maintained by Subcontractor pursuant to the Contract Documents.



# JOHNSON-LANCASTER AND ASSOCIATES, INC.

13031 US HWY 19 North, Clearwater, FL 33764

Phone: (727) 796-5622

3. It is expressly agreed by and between Subcontractor and Johnson-Lancaster that all insurance, whether issued on a primary or excess basis, afforded the additional insureds shall be primary insurance to any other insurance available to the additional insureds and that any other insurance carried by the additional insureds shall be excess of all other insurance carried by the Subcontractor and shall not contribute with the Subcontractor's insurance. Subcontractor further agrees that the amount of insurance available to Johnson-Lancaster and the additional insureds shall be for the full amount of the loss up to policy limits of liability and shall not be limited to the minimum requirements of this Subcontract. Subcontractor further agrees to provide endorsements on its insurance policies that shall state the foregoing; however, Subcontractor's failure to provide such endorsement shall not affect Subcontractor's agreement hereunder.
  
4. If the Subcontractor fails to procure and maintain such insurance, if required, Johnson-Lancaster shall have the right, but not the obligation, to procure and maintain said insurance for and in the name of the Subcontractor and the Subcontractor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance or at Johnson-Lancaster's option, Johnson-Lancaster may offset the cost incurred by Johnson-Lancaster against amounts otherwise payable to Subcontractor hereunder. Subcontractor further agrees that in the event of such failure to procure and maintain such insurance, Subcontractor shall be liable for all amounts which would have been payable pursuant to the insurance required by this Subcontract. If, in Johnson-Lancaster's discretion, Johnson-Lancaster is concerned that any insurance company selected by Subcontractor has, at any time, faced diminished financial strength or that the insurance company may no longer provide the same level of financial strength (such as a decline in an A. M. Best, Standard and Poor's or Moody's rating), Johnson-Lancaster may require that Subcontractor provide replacement insurance coverage through an insurance company satisfactory to Johnson-Lancaster.

IN THE EVENT THAT THE LAW OF THE STATE IN WHICH THE PROJECT IS LOCATED (OR OTHER APPLICABLE LAW) LIMITS THE ADDITIONAL INSURED COVERAGE THAT CONTRACTOR MAY REQUIRE FROM SUBCONTRACTOR, THEN SUBCONTRACTOR SHALL BE REQUIRED TO OBTAIN ADDITIONAL INSURED COVERAGE TO THE FULLEST EXTENT OF COVERAGE AND LIMITS ALLOWED BY APPLICABLE LAW AND THIS CONTRACT SHALL BE READ TO CONFORM TO SUCH LAW.





**XXXVI. Severability**

In the event that any provision or any part of a provision of these Terms and Conditions and/or the Agreement shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable laws by an authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of provisions of these Terms and Conditions and the Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**XXXVII. U.S. Government Projects**

In the event that the General Contract under which this Subcontract is being issued is a General Contract between Johnson-Lancaster and the United States Government or an agency thereof, additional Federal Acquisition Regulation (“FAR”) and agency FAR supplemental provisions are applicable to the Agreement. Such FAR and agency FAR supplemental provisions are contained on the attached document entitled “Federal Supplement” and such provisions are hereby incorporated by reference herein as if set forth at length herein. Subcontractor hereby ratifies and re-affirms its Subcontractor Certifications and Disclosures that Subcontractor signed and submitted with its proposal submitted earlier to Johnson-Lancaster and such Certifications and Disclosures are hereby incorporated herein by reference as if set forth at length herein.

**XXXVIII. Entire Agreement**

These Terms and Conditions incorporated by reference into the Agreement constitutes the entire agreement between the parties hereto. No oral representations or other agreements have been made by Johnson-Lancaster except as stated in the Agreement. The Agreement may not be changed in any way except as herein provided, and no term or provision hereof may be waived by Johnson-Lancaster except in writing signed by its duly authorized officer or agent. The heading descriptions of any term or provision of these Terms and Conditions are for convenience only and shall not be deemed to limit, restrict or alter the content, meaning or effect thereof.

The said parties, for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of all of the terms and provisions herein contained.