

## SAMPLE – TERMS & CONDITIONS

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### 1. CONTRACT DOCUMENTS

1.1 This Agreement consists of the following documents (the “**Contract Documents**”) and if there is a dispute, discrepancy or conflict within these documents of the Agreement, the order of priority of documents, from highest to lowest, shall be: (1) any Service Order (as hereinafter defined) issued pursuant to this Agreement; (2) this Agreement including any schedules, exhibits or appendices; and (3) the Prime Contract.

1.2 The Prime Contract includes all general, supplementary and special conditions, plans, amendments, modifications and all other documents forming or by reference made a part of the Prime Contract, as the case may be. Copies of the Prime Contract will be made available to Subcontractor and will be examined by the Subcontractor prior to commencement of the applicable Work.

1.3 MH and Subcontractor agree that the Prime Contract is incorporated in and forms part of this Agreement and the applicable Service Order as if fully set forth in this Agreement. Without limiting the generality of the foregoing, except as expressly provided to the contrary in this Agreement or a Service Order, in relation to performance of the Work:

- (a) Subcontractor shall assume and perform all the duties, responsibilities, obligations and liabilities of MH under the Prime Contract as if Subcontractor was MH and MH was the Client under the Prime Contract;
- (b) Subcontractor shall have the same rights, powers and remedies against MH under this Agreement as MH has against Client under the Prime Contract, as if Subcontractor was MH and MH was the Client under the Prime Contract;
- (c) Subcontractor shall be bound by all rulings of Client to the same extent that MH is bound; and
- (d) Subcontractor will not be entitled to greater rights, entitlements or relief against MH under this Agreement than MH actually obtains from Client under the Prime Contract.

### 2. WORK & STANDARD OF CARE

2.1 Subcontractor shall perform Work as requested by MH in writing from time to time and as agreed by Subcontractor, through the use of a work order (the “**Service Order**”) in the form attached hereto as Schedule “B”. For greater certainty, MH has no obligation to issue a Service Order under this Agreement. By commencing performance of the Work, Subcontractor shall be deemed to have accepted the applicable Service Order.

2.2 Unless expressly excluded in a Service Order, Subcontractor agrees to perform all Work specified in the Service Order, including all related work and services necessary to enable MH to satisfy its obligations under the Prime Contract. The Subcontractor shall use reasonable efforts to cooperate and coordinate the Work with other

contractors who may be present at the Site from time to time to allow the performance of its and their respective obligations to occur concurrently.

2.3 The Work shall be performed in accordance with:

- (a) the terms and conditions of the Service Order and this Agreement;
- (b) the terms and conditions of the Prime Contract applicable to the Services;
- (b) the standard of care, skill and diligence normally practiced by members of the design, engineering or construction profession providing services and performing work of a similar nature to the Work at the time and place that the Work is performed; and
- (c) all applicable laws, regulations, ordinances and stipulations of authorities having jurisdiction.

2.4 Subcontractor shall furnish equipment and experienced and competent staff as necessary for performance of the Work, including its proper administration, coordination, supervision and superintendence.

2.5 Prior to commencement of the Work, Subcontractor shall identify in writing to MH any investigations, surveys, tests, analyses and reports that may be necessary for the proper execution of the Work.

2.6 Except as expressly set out in this Agreement or a Service Order, the Subcontractor may only rely on the accuracy and completeness of all information provided by MH and Client to the extent MH may rely on the accuracy and completeness of such information under the Prime Contract. Nothing in this clause shall relieve Subcontractor of its responsibility to obtain any data required for execution of the Work.

2.7 Payment or additional time for services not included in the Work under this Agreement or a Service Order (“**Additional Work**”) will be permitted only when authorized by MH in advance and in writing, in the form attached hereto as Schedule “C” to this Agreement. Subcontractor shall notify MH in a timely manner when it has reason to believe any Additional Work is warranted. Errors and defects in the Work shall be corrected by Subcontractor without additional charge to MH or the Client

### 3. HEALTH, SAFETY, EQUIPMENT & ENVIRONMENT

3.1 Subcontractor shall take all reasonable and necessary precautions to protect property, the environment and persons from damage, injury or illness arising from the performance of the Work, and comply with all applicable occupational health and safety and environmental laws and regulations and all client requirements, including any applicable health, safety and environment plans or policies for the Project or of the Client.

3.2 Subcontractor shall be solely responsible for its activity and that of Subcontractor's employees, subcontractors or agents at the Project location identified in the Service Order (the "Site") with respect to Site safety and environmental protection. Neither the professional activities nor the presence of MH, or their employees shall be interpreted as control or direction of the operations of Subcontractor. Subcontractor is responsible for providing, at its own expense, all personal protective clothing and equipment required for its employees to perform their work in a safe and environmentally responsible manner. Subcontractor is responsible for ensuring that such equipment is in good condition and is properly inspected and maintained. Without limiting the foregoing, unless expressly stated in the Service Order, Subcontractor shall not be responsible for overall compliance with health and safety legislation at the Site and shall have no liability or responsibility to act as the "constructor" or "prime contractor" under applicable health and safety legislation.

3.3 Subcontractor's personnel are required to report "fit for work", meaning its personnel are in a condition to work safely. A person may be considered unfit for work if they exhibit a physical, mental or emotional state that may compromise a safe work environment, including signs or symptoms of being impaired or under the influence of drugs or alcohol.

3.4 At any time upon request by MH, Subcontractor shall provide evidence of compliance by Subcontractor and its subcontractors with applicable workers' compensation legislation, including payments due thereunder.

3.5 Subcontractor shall be solely responsible for the safety and protection of its equipment. Subcontractor shall confine construction equipment, temporary work, storage of products, waste products and debris, and operations of employees to limits indicated by laws, ordinances or permits, the Contract Documents, or by direction of MH or the Client and shall not unreasonably encumber the Site.

3.6 Subcontractor shall take all appropriate precautions to protect other persons or property at the Site during the period of the Work. Prior to completion of the Work, Subcontractor shall backfill, cover, fence, lock and take any other necessary precaution to prevent injury to persons or property caused by the Work.

#### 4. TERM & TERMINATION

4.1 The term of this Agreement shall commence upon the Effective Date and may only be terminated as written below. Termination of any Service Order under this Agreement shall not constitute termination of this Agreement, however, termination of this Agreement shall constitute termination of all outstanding Service Orders issued under this Agreement. The Subcontractor's obligations under a Service Order shall terminate only as written below or when the term of MH's obligations under the applicable Prime Contract have been discharged.

4.2 MH may suspend any Service Order upon notice if the Prime Contract has been suspended.

4.3 MH may terminate any Service Order as follows:

(a) upon notice, if the Project is lawfully interrupted for more than ten (10) days pursuant to an ordinance originating with a court or public authority having jurisdiction, in which

case MH agrees to pay Subcontractor for the Work duly performed up to the date of termination;

(b) upon notice, if the Client terminates the Prime Contract, in which case MH agrees to pay Subcontractor for the Work duly performed up to the date of termination. If termination of the Prime Contract arises due to a termination for convenience by the Client, MH shall also reimburse Subcontractor for the direct costs reasonably incurred by Subcontractor as a direct result of such termination, but only to the extent such reimbursement is available to MH under the terms of the Prime Contract, and not to include consequential damages such as lost profits or lost opportunities; or

(c) upon notice and subject to the Prime Contract, if Subcontractor fails to cure a default in respect of any of its obligations under the applicable Service Order within fifteen (15) days, or an extended rectification period if mutually agreed, following receipt of a written notice from MH specifying the nature of such default or defaults.

4.4 MH may terminate this Agreement (including any and all outstanding Service Orders) or any individual Service Order as follows:

(a) upon notice, if Subcontractor becomes insolvent or files for or is put in bankruptcy or makes a general assignment in favor of its creditors, or if all or any part of its property is put under receivership, in which case MH agrees to pay Subcontractor for the Work duly performed up to the date of termination; or

(b) for convenience by giving Subcontractor thirty (30) days' prior written notice of its intention to terminate, in which case MH agrees to pay Subcontractor for the Work duly performed up to the date of termination and to reimburse Subcontractor for the direct costs reasonably incurred by Subcontractor as a direct result of such termination, but not to include consequential damages such as lost profits or lost opportunities.

4.5 Unless terminated sooner in accordance with the terms of this Agreement or extended by written agreement of the Parties, this Agreement, including all Service Orders issued hereunder, shall terminate twelve (12) months from the last date Work was performed under a Service Order.

4.6 Copies of all reports, studies, conceptual designs, plans and specifications and related documents for the Project shall be handed over by Subcontractor to MH upon the earlier of termination of this Agreement, termination of the Service Order and completion of the Project. For greater certainty, in the event that Subcontractor is legally obligated under applicable law to retain any item of information provided by MH or Client, Subcontractor may retain one (1) copy of such information (the "Retained Information") which shall be treated as Subcontractor would treat its own confidential information which in any event shall not be with less than reasonable care. MH shall be provided with a list of any Retained Information, upon request.

#### 5. PRICE AND PAYMENT

5.1 For the Work, MH shall pay to Subcontractor a fee or compensation as set out in the Service Order. Where compensation is to be on a time and materials basis, the fee or compensation shall be based upon the rates shown in Schedule "D". Unless expressly set out in a Service Order, any fee or rate is exclusive of all applicable taxes.

Subcontractor shall not be entitled to any additional payment for the Work or Additional Work unless authorized by MH in advance and in writing in the form attached hereto as Schedule "C".

5.2 Payment by MH is subject to the lien legislation applicable to the Site. All payments by MH to Subcontractor respecting the Work shall be subject to the terms and conditions of the Prime Contract and, subject to the lien legislation applicable to the Site, conditional upon MH first having received payment from the Client.

5.3 Subcontractor shall submit to MH monthly invoices and a final bill upon completion of the Work. Each invoice shall be sent to MH by email to [payables@morrisonhershfield.com](mailto:payables@morrisonhershfield.com). Subject to any requirements of the Prime Contract, each invoice shall identify the Service Order number and the line item of the Service Order.

5.4 An invoice shall be paid by MH within seven (7) days of receipt of payment by MH from the Client, provided that an invoice acceptable to MH and the Owner has been received and is undisputed by MH or the Owner. In the event that MH disputes all or a portion of an invoice, MH shall give notice to Subcontractor in writing and shall pay any undisputed portion of the invoice as specified in this Agreement. Any dispute regarding an invoice or payment shall be resolved in accordance with the dispute resolution procedures of this Agreement. For great certainty, no payment subject to dispute shall be considered due under this Agreement until resolution of such dispute in accordance with Section 15.

5.5 Subcontractor shall maintain records of expenses and labour pertaining to Work not subject to a fixed fee and rendered on a time and materials basis under this Agreement on the basis of generally accepted accounting principles, and shall make records available to an authorized representative of MH on request of MH or the Client, at mutually convenient times.

## 6. TAXES AND DUTIES

6.1 With respect to any and all taxes, duties or remittances as may be applicable in connection with the Work, Subcontractor shall be solely responsible to timely remit any such taxes, duties or remittances and to comply with the requirements of any federal, provincial, territorial or local tax legislation applicable thereto.

6.2 Upon request, Subcontractor shall provide MH with applicable registration details, proof of compliance with any applicable tax legislation and with sufficient prescribed documentary information to allow MH to claim any applicable tax credits. Subcontractor shall notify MH in writing of any change in Subcontractor's status under applicable tax legislation.

6.3 If Subcontractor is a non-resident of Canada, where Subcontractor performs work in Canada, MH is required to deduct a 15% withholding tax from Subcontractor's invoices and remit to Canada Revenue Agency, pursuant to Section 105 of the Income Tax Act (Regulation 105). Subcontractor shall provide MH with invoices itemizing fees for work performed in Canada and fees for work performed outside Canada.

6.4 If MH is a resident of the United States and Subcontractor is a non-resident of the United States, MH is

required to deduct a withholding tax at the prescribed rate as outlined in the Internal Revenue Code (the "Code") and the related regulations to the Code unless Subcontractor provides MH with the required W-8 Ben form duly filled out and certified. Subcontractor shall provide MH with invoices itemizing fees for work performed in United States and fees for work performed outside the US.

## 7. TIME FOR PERFORMANCE

7.1 Time shall be of the essence in this Agreement. Subcontractor shall perform the Work in accordance with any schedule set out in a Service Order and in the Prime Contract and, in any event, in a timely and diligent manner as required to allow MH to satisfy any schedule requirements of the Prime Contract. Subcontractor shall not be entitled to any additional time for performance of the Work or Additional Work unless authorized by MH in advance and in writing. Subcontractor shall indemnify and hold harmless MH from and against any and all damages of any kind, including liquidated damages, suffered by MH or claimed by the Client or third parties attributable to or caused by Subcontractor's failure to perform the Work within the time fixed in a Service Order or the schedule requirements of the Prime Contract.

## 8. OWNERSHIP, CONFIDENTIALITY AND INTELLECTUAL PROPERTY

8.1 The plans, designs, drawings, specifications, notes, data, samples, materials, reports, reproducible and other documents and electronic data produced by Subcontractor in performance of the Work, including all patent, trademark, copyright, industrial or other intellectual property rights relating thereto (the "Deliverables") shall be owned by Subcontractor, provided the Service Order or Prime Contract do not provide that such Deliverables belong to the Client (in which case the provisions of the Service Order or Prime Contract shall govern). Subcontractor shall grant to MH and the Owner an irrevocable perpetual non-exclusive license to use the Deliverables for the Project. The Deliverables may not be reproduced for use for other projects or for extensions of the applicable Project by either Party without the express written permission of the other Party. Subcontractor shall ensure that all moral rights to the Deliverables have been waived, including by all of Subcontractor's employees.

8.2 MH and Subcontractor shall keep confidential, and shall cause their respective officers, directors, employees, agents, contractors or other representatives to keep confidential all matters respecting technical, commercial, business and legal issues relating to or arising out of performance of the Work, a Service Order, this Agreement or the Prime Contract and shall not, without the prior written consent of the other Party, disclose any such matters, except in strict confidence, to its professional advisors.

8.3 Subcontractor represents that the designs, processes, ideas, concepts, products, recommendations, suggestions, know-how, technical expertise, methods or other intellectual property provided, suggested, employed or otherwise disclosed by Subcontractor to MH in performance of the Work or in relation to the Project (the "Subcontractor IP") shall not infringe any patent, copyright, trademark or other intellectual property right of any third party. For the applicable Work and Project, Subcontractor grants MH and the Client a non-exclusive, perpetual, irrevocable, worldwide, fully paid and royalty free license, including the right to assign the license or grant sub-licenses, to any and all of Subcontractor IP.

8.4 Should any such designs, processes, ideas, concepts, products, recommendations, suggestions, know-how, technical expertise, methods or other intellectual property infringe any patent, copyright, trademark or other intellectual property right of any third party, Subcontractor undertakes, at its own expense, to make the changes necessary to ensure that any patent, copyright, trademark or other intellectual property right which any third party may have in respect of such designs, processes, ideas, concepts, products, recommendations, suggestions, know-how, technical expertise, methods or other intellectual property is not infringed, or to obtain the necessary authorizations on MH's behalf.

8.5 Subcontractor shall indemnify and hold harmless MH, its respective parent, subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns with respect to any Claims (as hereinafter defined) for infringement or alleged infringement of any intellectual property right of a third party arising from or related to Subcontractor's performance of the Work.

## 9. PERMITS AND LICENSES

9.1 Except as expressly set out in a Service Order, Subcontractor shall be solely responsible, at its own expense, to identify, obtain and maintain in force for the duration of the applicable Service Order any permit, license, approval or other requirement of any authority having jurisdiction required for or in relation to the Work.

## 10. TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

10.1 Subcontractor shall be responsible for any hazardous substances introduced to the Site or wastes generated in performance of the Work by the Subcontractor or persons within the Subcontractor's control including Subcontractor's employees, agents or subcontractors ("Subcontractor Hazardous Substances"). Subcontractor shall take all necessary measures required to ensure that Subcontractor Hazardous Substances are remediated, disposed of or rendered harmless in accordance with applicable laws.

## 11. DIFFERING CONDITIONS

11.1 Before commencing the Work, Subcontractor shall: (i) determine the location of all underground utilities and structures indicated in the Contract Documents or that are reasonably apparent from an inspection of the Site; and (ii) inspect and familiarize itself with the Site layout, Site conditions, Site access, and any other aspect of the Work or the Site as required for proper performance of the Work.

11.2 If MH or Subcontractor discover conditions at the Site which are:

(a) subsurface or otherwise concealed physical conditions which existed before the commencement of the Work which differ materially from those indicated in the Contract Documents; or

(b) physical conditions, other than conditions due to weather, that are of a nature which differ materially from those described in the Contract Documents and ordinarily found to exist and generally recognized as inherent in construction activities; and

(c) which would not have been readily apparent prior to the Subcontractor's commencement of the performance of the Work from a diligent inspection of the Site or from a diligent investigation of all information provided by MH and the Client, the character of the Work to be done, and all local conditions,

then the observing party shall give written notice to the other party of such conditions before they are disturbed and in no event later than five (5) working days after first observance of the conditions.

11.3 Except where prohibited by the Prime Contract, upon discovery of such conditions, Subcontractor shall not be required to continue performing the affected Work until such time as a resolution to address the differing condition has been mutually agreed to by MH and Subcontractor, including any change in compensation, time for performance or both.

11.4 MH will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would entitle the Subcontractor to an increase or decrease in Subcontractor's cost or time to perform the Work, MH will make application under the Prime Contract for a change in the Work. Subcontractor shall be bound by all rulings of the Client under the Prime Contract regarding entitlement to change in the Subcontractor's cost or time to perform the Work.

## 12. WARRANTY

12.1 In respect of its Work, Subcontractor shall provide warranties for a period of one (1) year or for any longer period prescribed by the Prime Contract or the Service Order (the "Warranty Period").

12.2 MH shall promptly notify Subcontractor in writing of observed defects or deficiencies which occur during the Warranty Period.

12.3 Subcontractor shall correct promptly, at Subcontractor's expense, defects or deficiencies in the Work which appear prior to and during the Warranty Period. Subcontractor shall correct or pay for damage to work in progress or already completed which results from corrections made by Subcontractor.

## 13. INSURANCE

13.1 For each Service Order, Subcontractor shall provide and maintain at its sole expense the insurance coverage stipulated in the Prime Contract for the Work as if Subcontractor was MH and MH was the Client under the Prime Contract. Subcontractor shall otherwise comply with the terms and conditions of the Prime Contract with respect to such insurance, including without limitation the provision of proof of insurance upon request and the inclusion of persons such as MH as Additional Insured on insurance policies, provided that throughout the term of this Agreement Subcontractor shall at all times provide and maintain at its sole expense insurance coverage not less than is stipulated in Schedule "E" to this Agreement. For greater certainty, where the Prime Contract is silent or provides for lower insurance coverages than set out in Schedule "E" to this Agreement, for each Service Order Subcontractor shall at a minimum provide and maintain the insurance coverage stipulated in Schedule "E" to this Agreement.

## 14. LIENS AND ENCUMBRANCES

14.1 To the extent permitted by the lien legislation applicable to the Site (as hereinafter defined), the Parties agree that no general lien shall arise under or in respect of any Work and that all liens shall arise and expire on a lot-by-lot basis, which, in the context of this Agreement and each Service Order, shall mean on a Site-by-Site and/or Project-by-Project basis, as applicable. For greater certainty, this shall mean that in the Province of Ontario, pursuant to Section 20(2) of the Construction Lien Act, as amended (the "CLA"), the Parties agree that Section 20(1) of the CLA does not apply. Subcontractor shall ensure that all subcontractors and/or subconsultants enter into a separate contract with Subcontractor for the Project.

14.2 To the extent that MH has timely paid all amounts due to Subcontractor under this Agreement (including a Service Order) the Subcontractor shall not register, nor shall the Subcontractor permit or suffer to exist the registration of any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever ("Encumbrance") against the real property interest of MH or Client (a "Subcontractor Lien"). For greater certainty, MH shall be considered to have timely paid the Subcontractor if all amounts owed and not subject to dispute or to any rights of set-off or withholding under this Agreement or under the Prime Contract have been paid in accordance with the terms of this Agreement.

14.3 If Subcontractor fails to comply with its obligations in Section 14.2 within ten (10) working days of notice of the existence thereof from any source, MH shall be entitled to pay into court an amount required to obtain an order from a court of competent jurisdiction vacating the Subcontractor Lien. Upon the exercise by MH of its rights under this Section 14.3, MH shall be entitled to immediately recover from Subcontractor and may exercise set-off rights with respect to:

(a) the amount paid into court pursuant to the preceding sentence, and

(b) all costs and expenses incurred by MH (including, without limitation, legal expenses on a full indemnity basis) in the exercise of its rights under this Section 14.3.

14.4 Subcontractor shall indemnify and hold harmless MH, its respective parent, subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns from and against any claims, demands, losses, settlements, costs, expenses, penalties, damages, actions, suits, or proceedings ("Claims") related to Subcontractor Liens.

## 15. INDEMNIFICATION

15.1 Subcontractor shall indemnify and hold harmless MH, including its respective parent, subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns from and against any Claims arising from or related to Subcontractor's breach of this Agreement or a Service Order or non-performance of its obligations under this Agreement or a Service Order.

15.2 Each Party shall indemnify and hold harmless the other, including its respective parent, subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns from and against any Claims by third parties that arise out of or are attributable to this Agreement, a Service

Order or the Work, including Claims attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, to the extent that such Claims are attributable to or caused by the negligence or willful misconduct of the indemnifying Party or anyone for whose acts the indemnifying Party is responsible in law.

## 16. LIMITATION OF LIABILITY

16.1 The Parties' liability under each Service Order shall be limited as follows:

(a) for Claims of the type for which insurance is required to be provided under this Agreement and/or the Service Order, limited to the amount of such insurance; and

(b) for Claims of the type for which insurance is not required to be provided, the total fee paid by MH to Subcontractor under the Service Order.

16.2 MH AND SUBCONTRACTOR EACH WAIVE THEIR RIGHTS TO RECOVER FROM THE OTHER ANY CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, INCOME, PROFITS, FINANCING OR REPUTATION) ("CONSEQUENTIAL DAMAGES"), ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, A SERVICE ORDER, A PROJECT OR THE PERFORMANCE OF THE WORK. NOTWITHSTANDING THE FOREGOING, SUBCONTRACTOR SHALL BE LIABLE FOR CONSEQUENTIAL DAMAGES TO THE EXTENT MH IS LIABLE FOR CONSEQUENTIAL DAMAGES UNDER A PRIME CONTRACT.

16.3 Notwithstanding the foregoing, Subcontractor shall be liable to MH for all Claims in relation to the Work arising under the Prime Contract to the same extent and in the same manner as MH is liable to the Client under the Prime Contract, as if Subcontractor was MH and MH was the Client under the Prime Contract. For greater certainty, nothing in this Section 16 shall be interpreted to prevent MH from recovering in full from Subcontractor for any and all Claims against MH under the Prime Contract to the extent such Claims are caused or contributed to by Subcontractor.

## 17. NON-SOLICITATION

17.1 During the term of this Agreement and for a period of one (1) year thereafter, Subcontractor shall not directly or indirectly, either alone or in conjunction with any individual, firm, corporation, association or other entity, without the prior written consent of MH:

(a) solicit or attempt to solicit the employment of, or hire, employ, contract, retain or engage, or make an offer in respect of same to, any officer, director, partner, employee or contractor of MH directly or indirectly associated with a Project that is subject to this Agreement or a Service Order issued hereunder; or

(b) compete with MH for work issued by the Client that is directly or indirectly related to a Project that is subject to this Agreement or a Service Order issued hereunder.

17.2 Subcontractor acknowledges and agrees that monetary damages would not be an adequate remedy to compensate MH for any breach of the Subcontractor's obligations under this Section 17. Accordingly Subcontractor

agrees that, in addition to any and all other remedies available to MH under this Agreement or at law or in equity, MH shall be entitled to obtain relief by way of a temporary or permanent injunction to enforce such obligations.

## **18. DISPUTE RESOLUTION**

18.1 Any Claims or disputes arising under this Agreement shall be pursued in a timely fashion and in accordance with the dispute resolution terms of the Prime Contract. If not specified in the Prime Contract, where the Site is located in Canada, any dispute resolution proceedings shall be held in Toronto, Ontario, and where the Site is located in the United States, any dispute resolution proceedings shall be held in Atlanta, Georgia. Disputes shall not constitute a reason for suspension or delay in Subcontractor's performance of the Work

18.2 Upon the request of MH, Subcontractor will attend any dispute resolution proceedings (including negotiation, mediation, arbitration, litigation or otherwise) initiated under the Prime Contract.

## **19. GOVERNING LAW**

19.1 This agreement shall be governed by, construed and enforced in accordance with the laws of the province, state or territory of the Site.

## **20. REPRESENTATIONS AND WARRANTIES**

20.1 Subcontractor represents and warrants to MH that it is competent to perform the Work required under this Agreement, and that it has the necessary qualifications including the knowledge, skill, experience and ability to perform its obligation to the standard of care set out in this Agreement, any Service Order and the Prime Contract.

20.2 Each Party represents and warrants that the respective Party will, in the promotion and completion of its activities under this Agreement, maintain ethical standards of business conduct, will not engage in corrupt practices, including but not limited to bribery, collusion, kickbacks or other non-ethical business practices, and will comply with all applicable laws, conventions and treaties.

## **21. STATUS**

21.1 The Parties to this Agreement are independent contractors, and nothing in this Agreement shall constitute either Party an agent, employee, joint venturer or partner of the other. Neither Party shall, without the express written

consent of the other, enter into any contract or assume any obligation or liability for or in the name of the other.

## **22. NOTICES**

22.1 Notices in writing between the Parties shall be considered to have been received by the addressee on the date of delivery, if delivered by hand or by facsimile to the individual, or to a member of the firm, or to an officer of the corporation for whom they are intended; or if sent by regular or registered post, to have been delivered within five (5) working days of the date of mailing when sent to the notice address for the Party as identified in the heading to this Agreement.

## **23. ASSIGNMENT**

23.1 Neither Party shall assign, in whole or in part, its interest under this Agreement without prior written consent of the other Party and specifically Subcontractor shall not subcontract any portion of the Work hereunder without MH's consent.

23.2 MH shall have the right at any time in its sole discretion to require Subcontractor to replace any employee with another employee acceptable to MH (the "Replacement"). Five (5) business days will be allowed for implementation of the Replacement.

## **24. ENTIRE AGREEMENT**

24.1 This Agreement supersedes all other agreements, oral or written, and constitutes the entire agreement between the Parties with respect to the subject matter thereof and supersedes all prior agreement, negotiations, discussions and understanding relating to it unless incorporated by reference herein. No cancellation, modification, amendment, deletion, addition, waiver or other change in this Agreement shall have effect unless specifically set forth in writing and signed by the Parties.

24.2 If any part of this Agreement is held illegal, unenforceable or void, each of the remainder of the provisions shall nevertheless remain in full force and effect as a separate Agreement and shall in no way be affected impaired or invalidated.

24.3 Unless otherwise stated, all indemnities, representations and obligations of the Parties under this Agreement, including under all Service Orders issued hereunder, shall survive indefinitely the termination or expiration of this Agreement.