

HICKOK AE LLC dba AIR ENTERPRISES SUBCONTRACT AGREEMENT TERMS AND CONDITIONS

Agreement No.: _____ **Job No.:** _____

Project Name: _____ **Address:** _____
(the "Project" or "Premises")

Air Enterprises ("Contractor") and Subcontractor agree to be bound by the following terms and conditions (the "Agreement"). Any provisions in Subcontractor's invoices, proposal, billing statements, acknowledgment forms or similar documents which are inconsistent with the provisions of this Agreement shall be of no force or effect, regardless of whether such provisions would materially alter the terms hereof.

1. ORDER AND ACCEPTANCE: Subcontractor's commencement of or promise of shipment or furnishing of services that are the subject matter of this Agreement (the "Merchandise" or "Services" or "Work") shall constitute Subcontractor's agreement that it will deliver the Merchandise or Services or Work in accordance with the terms and conditions of this Agreement. Subcontractor agrees to follow the shipping and invoicing instructions issued by Contractor, which instructions are incorporated by reference into this Agreement. Shipment by Subcontractor of any part of the Merchandise or Services ordered herein shall constitute an acceptance of this Agreement for all of the Merchandise or Services or Work ordered herein and acceptance of these terms, conditions, and instructions. Any request or demand for, or statement purporting to make Subcontractor's acceptance conditional on Contractor's assent to, additional or different terms shall be of no effect unless Contractor accepts the changes in writing and initials the changes on the face hereof. Contractor may revoke or modify this Agreement at any time prior to acceptance by Subcontractor. Only stenographic, arithmetic and clerical errors on the part of Contractor are subject to correction in Contractor's discretion.

2. INCORPORATION BY REFERENCE: The general, special and supplemental conditions, drawings, plans, specifications, delivery and construction schedules, and safety rider, referred to herein or in the attached Schedule 1, or that are attached, are specifically incorporated by reference and are made a part of this Agreement. Subcontractor agrees to perform all portions of the work or services hereunder for Contractor, subject to and in strict accordance with the terms and conditions set forth in this Agreement and all such general, special and supplemental conditions, drawings, plans, specifications, and delivery and construction schedules referenced or incorporated by reference in this Agreement. It is further understood and agreed that all documents between Contractor and Contractor's Customer also are incorporated into this Agreement by reference and are made a part of this Agreement. Subcontractor represents and agrees that it has carefully examined and understands this Agreement and all of the referenced and incorporated documents. The documents (other than provisions relating to the contract price or fee payable to Contractor) have been made available to Subcontractor and will remain available to Subcontractor at reasonable times at the branch office of Contractor that is managing the Project. This Agreement and the provisions of the referenced documents are intended to supplement and complement each other and shall, where possible, be so interpreted. If, however, any provision of this Agreement conflicts with a provision of the referenced documents, or if there is a conflict within this Agreement or within any of the referenced documents, the provision imposing the higher quality, greater quantity or greater duty or obligation on Subcontractor shall govern. Subcontractor shall be bound by all interpretations of the Contract Documents made by Contractor's Customer, or the project architect or engineer that are binding upon Contractor. Subcontractor further agrees to be bound by, and to assume toward Contractor, all the terms, obligations, responsibilities and conditions of the referenced and incorporated documents to the same extent that Contractor, in turn, is bound by such referenced documents to the Contractor's Customer or the Project Owner. The referenced and incorporated documents shall collectively be referred to as the "Subcontract Documents."

3. PRICES: Unless otherwise specified, prices are F.O.B. Contractor's facility and/or jobsite as specified in the purchase order, and prices include the amounts of all applicable sales, use, transfer, excise or other taxes, tariffs or custom duties.

4. TERMS OF PAYMENT: Terms of payment, unless otherwise expressly agreed in writing, are as set forth on the face of the purchase order (including payment terms incorporated herein by reference). Risk of loss with respect to nonconforming Merchandise or Services shall not pass to Contractor unless and until nonconformities are cured or Contractor accepts the Merchandise or Services in writing despite the nonconformities. All payments shall be made in United States currency. Payment shall not be to the prejudice of any claims that Contractor might have against Subcontractor on account of omissions or shortages in shipment or defects or deficiencies in the Merchandise or Services. Subcontractor shall submit, as a condition precedent to any payment, details of cost, waivers of lien, and sworn affidavits of subcontractor, prevailing wage or payroll reports, EEO reports, consent of surety to payment, and any other documentation (in form and substance satisfactory to Contractor and Contractor's Customer) as Contractor may request from time to time. Subcontractor understands and agrees that Contractor's receipt of payment from Contractor's Customer on account of Subcontractor's Merchandise and Services is an express and absolute condition precedent to Contractor's obligation to pay Subcontractor. Subcontractor hereby assumes the risk of default or nonpayment by Contractor's Customer, and the creditworthiness of Contractor's Customer. Subcontractor shall not be entitled to recover interest on late or past due payments. In addition to the requirements set forth in this Agreement, final payment shall not become due to Subcontractor until the Subcontractor submits to the Contractor (1) an affidavit satisfactory to Contractor and Contractor's Customer that payrolls, bills for materials and equipment, and other indebtedness of Subcontractor relating to the Project for which the Contractor or Contractor's Customer might be liable have been paid or otherwise satisfied; (2) a certificate that insurance required by the Contract Documents is in force following completion of the Subcontractor's performance; (3) releases and waivers of liens and claims of the Subcontractor and each subcontractor, material man, and vendor of Subcontractor (and their respective-lower tiers); and (4) consent of Subcontractor's surety to release of final payment. Unless otherwise provided in the Agreement, Contractor shall have the right to withhold a 10% retainage from any payments (whether progress payments or the final payment) due to

Subcontractor. The retainage shall be paid to Subcontractor within 10 days after the last to occur of the following: (a) final delivery, completion and performance of all work, merchandise or services and obligations under this Agreement by Subcontractor; (b) delivery to Contractor of such sworn statements, affidavits, certificates and releases of lien as Contractor may require to evidence the full and final release of mechanic's liens and claims by Subcontractor and by all laborers, subcontractors and material men of Subcontractor and all lower-tiers; (c) delivery to Contractor of all manuals, drawings, warranties, guaranties and other documents required by this Agreement or the subcontract documents; and (d) Contractor's receipt of retainage from Contractor's Customer covering Subcontractor's Work, Merchandise or Services. If the Contractor's Customer does not opt to hold retainer on Contractor, and Subcontractor has not furnished bonds, then Contractor may, in Contractor's discretion, continue to hold retainer in an amount up to 10% of Subcontractor's approved billings not as retainer, but rather in lieu of bonds guaranteeing Subcontractor's performance.

5. SCOPE OF WORK: The Merchandise, Services or Work of Subcontractor includes, but is not limited to, such of the following as may be necessary to perform and complete the work: all plant, materials, tools, equipment (whether for temporary or permanent use), scaffolding, supplies, transportation cartage, loading, hoisting, forms, patterns, models, shop drawings, measurements and other facilities; all labor, work, supervision, cutting, patching, cleaning, temporary construction and other services; and all insurance, taxes, benefits, royalties, temporary utilities and other related costs except as otherwise provided in this Agreement. Subcontractor shall be responsible for all work under the Subcontract Documents or reasonably inferable therefrom in order to provide a complete project.

6. TIME AND COORDINATION: Subcontractor shall diligently and continuously prosecute and complete the Work and Services with the other work being performed on the project and premises, in accordance with the time and scheduling requirements set forth on the Agreement and the Subcontract Documents, or any revisions or modifications thereto. **TIME IS OF THE ESSENCE.** If the progress of the Project on the Premises or any component thereof is delayed, obstructed, hindered or interfered with by any fault, neglect, or failure to act of Subcontractor or any of its officers, agents, employees, subcontractors, or suppliers so as to cause any additional cost, expense, liability or damage to Contractor or Contractor's Customer. Subcontractor agrees to reimburse Contractor and the Contractor's Customer for, and indemnify them against, all such costs, expenses, liabilities or damages. Subcontractor shall continuously monitor the Project so as to be fully familiar with the timing, phasing and sequence of operations of the Work and of other work on the Project. Subcontractor shall coordinate the Work and the Merchandise or Services with any other work in such manner as Contractor may direct to avoid conflict or interference of such work with others, shall participate in the preparation of coordination drawings and shall conform the work and merchandise or services to the work of Contractor and others and the Subcontract Documents to prevent discrepancies (and to avoid unnecessary cutting or patching) with contiguous work.

7. SITE CONDITIONS: Subcontractor represents that it has made such investigation and inspection of the nature, location and the conditions of the Project and Premises (*including the character of the surface and subsurface conditions or obstacles to be encountered on, under and around the project or premises, access thereto, and storage and work areas available to Subcontractor thereon*) as are necessary to determine the difficulty and cost to Subcontractor of properly furnishing the merchandise or services and performing and completing the work. Subcontractor represents that it has had full opportunity to view, sample, inspect or test the conditions on the premises prior to the execution of this Agreement, and Subcontractor is not relying upon any opinions or representations of Contractor, the Contractor's Customer, or any of their respective officers, agents or employees. If conditions are encountered at the premises which are subsurface or otherwise concealed physical conditions which were unknown to Subcontractor and which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities, then Subcontractor shall give Contractor notice promptly before conditions are disturbed and in no event later than twenty-four (24) hours after first observance of the conditions. Subcontractor shall not be entitled to any additional compensation or damages by reason of any such conditions unless Contractor's Customer is liable for and actually pays the same to Contractor, nor shall Subcontractor be entitled to an extension of the time for performance of the work and furnishing of the merchandise or services unless Contractor's Customer grants such extension of time to Contractor. Contractor, upon receipt of any payment by Contractor's Customer to Contractor based upon any such claim made on behalf of Subcontractor, will pay the same to Subcontractor, less Contractor's expenses in pursuing payment from Contractor's Customer. Except to the extent expressly provided in this Agreement, Subcontractor waives the right to make any claims against Contractor based upon conditions encountered at the Premises.

8. PERMITS, LICENSES, AND COMPLIANCE WITH LAWS: Subcontractor shall secure, pay for and keep in effect all licenses, permits and inspection certificates necessary for the proper execution and completion of the Work and shall deliver all certificates of inspection and other certificates and permits to Contractor. Subcontractor shall comply with all laws, ordinances, rules and regulations of governmental entities having jurisdiction, including but not limited to those relating to safety, health, discrimination in employment, wages, fair employment practices or equal employment opportunity, and with the requirements of the governing authorities applicable to this Agreement. In accepting this Agreement, Subcontractor shall be deemed to represent that the Merchandise and Services and Work was or will be produced or performed in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. Unless otherwise agreed in writing, Subcontractor shall insert a certificate on all invoices submitted in connection with this Agreement stating that the Merchandise and Services and Work covered by the invoice was produced in compliance with applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof. Subcontractor shall also insert a certificate on all invoices that it has completed the OSHA 10-hour safety training course. Subcontractor further represents that the Merchandise and Services to be furnished and/or work performed hereunder was or will be produced or performed in compliance with Executive Order 11246 and regulations issued thereunder, and any other standards, rules and regulations that apply to the project of Contractor's Customer, including those that are incorporated by reference into this Agreement.

9. TAXES; SHIPMENTS: Subcontractor shall file all tax returns and reports with, and pay when due all taxes and contributions owing to each governmental entity or subdivision applicable to the merchandise or services or work. or to

the wages of its employees for services in connection with this Agreement, including, but not limited to, all contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the unemployment insurance law of any state, the 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 engaged in the Work; 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 Subcontractor or any other person or persons acting for, through or under Subcontractor by reason of the performance of the Work or the furnishing of the merchandise or services; and all pension, welfare, vacation, annuity and other union benefit contributions payable under or in connection with labor agreements with respect to all persons engaged in the Work.

10. WORKER'S COMPENSATION: Subcontractor, at its expense, shall fully comply with the worker's compensation laws for each state in which the Work is performed by its employees, and with the safety and other regulations of the governmental authorities that administer such laws. Before commencing the Work, Subcontractor shall deliver to Contractor certificates evidencing such compliance with respect to each applicable state. Further, Subcontractor, at its expense, shall procure and maintain in full force and effect for the duration of the Work, to the extent available, Worker's Compensation insurance providing coverage for statutory benefits and Employer's Liability Coverage of \$1,000,000 per occurrence / accident / employee. The policy shall contain an All States endorsement. The policy shall be endorsed to provide a waiver of subrogation in favor of Contractor. Prior to the commencement of the work, Subcontractor shall furnish Contractor certificates evidencing that this insurance is in effect with the coverages and minimum limits specified above and with insurance companies acceptable to Contractor.

11. INSURANCE AND BONDS: Subcontractor, at its expense, shall obtain prior to the commencement of the work or the furnishing of merchandise and services and maintain in effect (and furnish Contractor certificates in triplicate or, if requested by Contractor, copies of the policies evidencing that it has in effect), the following insurance coverages and minimum limits with insurance carriers acceptable to Contractor:

- A. Commercial General Liability - This insurance shall be written on an occurrence basis with limits not less than \$2,000,000.00 per occurrence and \$2,000,000 annual aggregate. The policy shall include coverage for Premises/Operations, Independent Contractors, Contractual Liability (sufficient to cover the liability assumed by the Subcontractor under the Agreement), Property Damage arising out of the "XCU" hazards, Completed Operations, Products Liability, Broad Form Property Damage, and Personal Injury. The Completed Operations coverage shall be maintained for at least three (3) years after the final completion of the Project of which the Work and the merchandise or services are a part. If the policy contains a general aggregate limitation, then the policy shall be endorsed to provide a \$2,000,000.00 specific aggregate for the Work under this Agreement.
- B. Automobile Liability - The policy shall contain limits of not less than \$1,000,000.00 Combined Single Limit and include coverage for all Owned, Hired and Non-owned automobiles.
- C. Excess/Umbrella Liability - The policy(ies) shall be written with limits of not less than \$5,000,000.00 Combined Single Limit and shall be endorsed in the same form and manner as the Commercial General Liability, Business Automobile Liability, and Employer's Liability coverages.
- D. Professional Liability - If Subcontractor is performing design services, then Subcontractor, or with Contractor's consent, Subcontractor's consultant, shall furnish professional liability (errors and omissions) coverage with a minimum limit of \$2,000,000 for each occurrence and \$2,000,000 annual aggregate. If the professional liability (errors and omissions) insurance is written on a claims-made basis, then such insurance shall have a retroactive date no later than the date of the Agreement and shall include a supplemental extended reporting period provision. Subcontractor shall require each of its subcontractors and consultants providing engineering or architectural services to maintain separate errors and omissions (professional liability) insurance coverages to protect against claims or damages arising out of the performance of their respective services in furtherance of the Agreement.

With the exception of the Professional Liability coverage only, Contractor shall be named as an additional insured to Subcontractor's liability insurance policies for liabilities or claims arising out of the Work, merchandise or services, and such insurance shall be endorsed so as to make it primary to any liability insurance carried by the Contractor. No policy of insurance naming Contractor as an additional insured shall contain any exclusion or prohibition against first-party claims or claims by any party named as an additional insured. Certificates of Insurance, and copies of policies if requested, acceptable to the Contractor shall be delivered to the Contractor prior to commencement of the Work. These Certificates as well as insurance policies required by this paragraph shall contain a provision that coverage will not be canceled or allowed to expire until at least thirty days (30) prior written notice has been given to the Contractor. The foregoing insurance coverages are required to remain in force for a period of three (3) years after final payment by Contractor to Subcontractor, and an additional certificate evidencing continuation of such coverage shall be submitted to the Contractor prior to final payment. The Contractor and Subcontractor waive all rights against each other and the contractors, subcontractors agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by property insurance applicable to the project or the work, services or merchandise, except such rights as they may have to proceeds of such insurance. The Contractor or Subcontractor, as appropriate, shall require from contractors and subcontractors by appropriate agreements, written where legally

required for validity, similar waivers each in favor of other parties enumerated in this Paragraph.

In addition to the general and specific insurance requirements set forth above, Subcontractor shall furnish, at the request of Contractor, a one hundred percent (100%) performance bond and payment bond for the full amount of the price of this Agreement. The surety under the bond shall have a treasury rating acceptable to Contractor and shall be licensed to transact business in the state in which the Project is located. The form and terms of the performance and payment bond(s) shall be satisfactory to Contractor. The cost of any bond premiums shall be included in the Subcontract price unless otherwise specified on the face of the Purchase Order or in this Agreement.

12. NO ASSIGNMENT: Absent Contractor's written consent, Subcontractor may not assign any rights or delegate any duties that Subcontractor may have under this Agreement, in whole or in part. Any assignments or delegation in violation of the foregoing is void and not binding on Contractor. No such assignment or delegation shall bar Contractor from asserting against Subcontractor, or the transferee, or both, any claim or rights that Contractor may have against Subcontractor, including rights of recoupment or set-off.

13. UNAVOIDABLE CANCELLATION: Contractor reserves the right to cancel this order in whole or in part in the event of lockout, strike, unavoidable accident, riot, war, act of God, fire, flood, earthquake, or any other casualty whatsoever affecting Contractor. Such cancellation shall be without penalty to Contractor and subject to Paragraph 8.

14. CANCELLATION FOR CAUSE: This Agreement is not subject to cancellation or modification by Subcontractor, in whole or in part, except with Contractor's express written consent. Contractor may terminate and rescind all or part of this Agreement upon three (3) days prior written notice and opportunity to cure in the event Subcontractor breaches or fails to perform any of its obligations under this Agreement or the subcontract documents, or in the event Subcontractor becomes insolvent or proceedings are instituted by or against Subcontractor under any provisions of any federal or state bankruptcy or insolvency laws, or in the event Subcontractor ceases its operations, or in the event Contractor requests adequate assurance of due performance and Subcontractor fails to provide such assurance in writing within three (3) days after the date of Contractor's request therefor. Time is of the essence to this Agreement, and Subcontractor's failure to meet, or apparent inability to meet, any delivery date, milestone dates, or completion dates shall constitute a material breach of this Agreement. Subcontractor shall not be entitled to payment for Merchandise or Services or Work furnished under this Agreement after the cancellation date. Contractor shall have the right to deduct the cost of remedying the default, supplementing Subcontractor's forces, and completing the Subcontractor's performance under this Agreement with either Contractor's own forces or through the services of third parties. Contractor shall be entitled to deduct the cost of completion for sums otherwise due or to become due Subcontractor. Subcontractor shall be obligated to reimburse Contractor upon demand for any expenses or costs of supplementation or completion that exceed sums due Subcontractor under the Agreement. In the event that a termination or cancellation under this paragraph is determined to be unjustified or wrongful, then the termination or cancellation shall be treated as a "convenience termination" under paragraph 15, and Subcontractor's remedies and damages are limited as provided for in paragraph 15.

15. CONVENIENCE CANCELLATION / SUSPENSION: Contractor shall have the option at any time (whether or not Subcontractor is in default) upon written notice to Subcontractor, to cancel or terminate this Agreement in whole or in part, or to delay or suspend the delivery or completion of all or part of the Merchandise or Services or Work. Such termination, suspension, delay shall be without cost to Contractor. Subcontractor only shall have the right to compensation (a) in the case of termination, for actual costs of merchandise and services furnished by Subcontractor in connection with this Agreement prior to such termination; provided, however, that in no event shall such amount, together with all previous payments made to Subcontractor, exceed the price(s) set forth in this Agreement; or (b) in the case of delay or suspension, for reasonable handling and storage charges or overhead damages and other indirect expenses. Under no circumstances shall Subcontractor be entitled to anticipated profits or lost profits for Merchandise or Services or Work that remain to be furnished or performed. Subcontractor also shall not be entitled to storage charges or other consequential or incidental damages or termination costs or expenses. Contractor's obligation to pay Subcontractor is expressly conditioned on, and shall be limited to, Contractor's receipt of actual payment from Contractor's customer on account thereof.

16. SUBCONTRACTOR'S REPRESENTATIONS AND WARRANTIES: Subcontractor represents and warrants to Contractor, in addition to all warranties implied by law, that each item of merchandise or services described on the face hereof, together with all related packaging and labeling and other Material or Work furnished by Subcontractor, shall (a) be free from defects in design, workmanship or materials including, without limitation, such defects as could create a hazard to life or property or defect in Subcontractor's or Contractor's work; (b) conform in all respects with all applicable federal, state and local laws, orders and regulations, including, but not limited to, those regarding occupational safety and health and wage and hour laws; (c) not infringe or encroach upon Contractor's or any third party's personal, contractual or proprietary rights, including patents, trademarks, copyrights, rights of privacy or trade secrets; and (d) conform to all of Contractor's specifications and the Subcontract Documents, and to all articles shown to Contractor as samples of Subcontractor's as merchandise or services. All warranties set forth in this paragraph, or in any other part of this Agreement (including warranties incorporated herein by reference), or which law implies, shall survive any inspection, acceptance or payment by Contractor. Such warranties shall be in addition to Contractor's other rights and remedies, and shall not be construed as a limitation on Contractor's claims or rights, including the right to enforce the Agreement against Subcontractor for the applicable statutes of limitation for breach of a written contract. Subject to the foregoing, Subcontractor warrants all goods and services for a period of no less than two (2) years from the date of delivery or completion of Subcontractor's performance under the Agreement or substantial completion of the Project that is the subject of this agreement, whichever is later. In the event of a warranty claim, Subcontractor shall promptly remove and replace any defective or nonconforming Merchandise or Services or Work at Subcontractor's sole cost and expense. Subcontractor also shall be responsible for the cost of correcting the Materials and Services and Work and property of Contractor, Contractor's Customer, or others damaged by Subcontractor's defective merchandise or services, including goods and work of Contractor and others that are damaged by Subcontractor in connection with Subcontractor's performance of warranty work.

17. MERCHANTABILITY: Subcontractor represents and warrants to Contractor that all Merchandise and Services and Work delivered or work performed pursuant to this Agreement will be merchantable at the time of delivery to Contractor and at the time of use by Contractor's Customer, and will be fit and safe for sale and use by

Contractor and Contractor's Customer for which such items are ordinarily intended and for any particular intended use of which Subcontractor or its agents have actual or constructive knowledge.

18. INDEMNIFICATION: Subcontractor shall reimburse, indemnify, hold harmless, and defend Contractor, Contractor's Customer, the Project, and the Project owners (and their respective officers, employees, partners, agents and representatives) from and against any claim, lien, mechanics' lien, cause of action, lawsuit, demand, fine, penalty, assessment, loss, expense or damage of whatever kind or description (including legal fees), including any special, incidental and consequential damages arising from or relating to Subcontractor's performance under this Agreement, Subcontractor's negligence or other wrongful acts, or Subcontractor's breach of this Agreement. The scope of this indemnity agreement includes, without limitation, any and all claims, damages, demands, assessments, or lawsuits for personal injury, death or property damage, which may result from Subcontractor's negligence or other wrongful acts or Subcontractor's breach of this Agreement or its representations and warranty obligations under this Agreement or which may result from any products liability claims relating to the merchandise or services. The scope of this indemnity agreement applies to the acts or omissions of Subcontractor, its agents, employees, subcontractors, vendors, material men, and lower-tiers, or anyone for whom Subcontractor is legally responsible. Subcontractor, at Subcontractor's sole expense, shall promptly dispose of all such claims and liens, defend all lawsuits filed against Contractor or Contractor's Customer or the Project owner on the account thereof, pay all judgments rendered against Contractor in such lawsuits (including any prejudgment interest assessed against any indemnitee hereunder), and reimburse Contractor or Contractor's Customer in cash upon demand for all reasonable expenses incurred by Contractor or Contractor's Customer on the account thereof including, but not limited to, attorney fees, expert witness fees and court costs. Subcontractor shall indemnify Contractor and hold Contractor harmless from the above-referenced claims regardless of whether such claim is caused or alleged to be caused in part by any joint or concurrent negligent act (either active or passive) or omission by a party indemnified hereunder; provided however, that Subcontractor shall not be obligated to indemnify for those claims to the extent that the same arise from the sole negligence or willful misconduct of Contractor or Contractor's agents, servants or independent contractors who are directly responsible to Contractor, excluding Subcontractor herein. Notwithstanding anything to the contrary contained herein, Contractor at its option shall have the right to participate in the defense of any claims asserted against it, approve the selection of counsel and approve the terms of any settlements made in its name or on its behalf. The scope of Subcontractor's duty to defend and indemnify Contractor under this paragraph shall not be limited in any manner whatsoever by any immunity or limitations of liability afforded to Subcontractor under the workers' compensation laws, constitutions, or any other employee benefit acts. All such immunity and/or limitations of liability are hereby waived by Subcontractor.

19. LIEN WAIVER AND BONDING LIENS: For good and valuable consideration, including the negotiated price for the Merchandise and Services and Work under this Agreement, Subcontractor unconditionally waives and releases any and all mechanics' lien rights or claims of lien rights against the premises or project or Contractor funds due or the project fund. Subcontractor agrees not to file, or to permit its subcontractors, vendors, laborers, unions, or material men (including lower-tiers), any mechanics' liens or attested accounts to secure payment for materials or services or work furnished in furtherance of this Agreement. Subcontractor further agrees that any such lien shall be void and unenforceable and shall constitute a substantial and material breach of this Agreement. Contractor shall be entitled to set off against any sums due or to become due Subcontractor under this Agreement an amount equal to two times the amount of the lien or attested account or other claim of Subcontractor or any of Subcontractor's subcontractors, suppliers, vendors, material men, laborers, unions and lower-tiers. Contractor shall be entitled to recover from Subcontractor the attorneys' fees, bond premiums, and expenses that Contractor incurs to defend and/or discharge any such mechanics' lien or attested account claim of Subcontractor, or Subcontractor's subcontractors, vendors, suppliers, material men, unions, laborers, or lower-tiers. Subcontractor further agrees to indemnify, defend and hold Contractor, Contractor's Customer, the Project, the Premises, and the Project owners (and their respective officers, employees, partners, agents and representatives) harmless from and against any and all liens, claims, damages, demands and causes of action by any subcontractors, suppliers, vendors, laborers, unions, and other persons or entities working directly or indirectly for Subcontractor (including lower-tier subcontractors, suppliers, and vendors) arising from or relating in any way to any work or materials or services furnished hereunder. Within five (5) days of receipt of written notice from Contractor, Subcontractor shall cause to be discharged and released any lien or claim or Subcontractor or any of Subcontractor's subcontractors, suppliers, vendors, laborers, unions, and other persons or entities working directly or indirectly for Subcontractor (including lower-tier subcontractors, suppliers, and vendors). In the event of a lien by a subcontractor, supplier, material man, vendor, laborer, union or other lower-tier of Subcontractor, subcontractor shall immediately upon demand by Contractor post a surety bond or other alternate security to discharge the lien from the project and/or property, in accordance with Chapter 1311.01 et seq. of the Ohio Revised Code. If Subcontractor fails to honor its obligations under this paragraph, then Contractor may, at Contractor's sole option (and without incurring direct liability to any third-party to this Agreement), pay the claim directly and deduct the amount of Contractor's direct payment from the sums due Subcontractor under this Agreement. The provisions in this paragraph shall be in addition to Contractor's other rights, and Subcontractor's other obligations, in this Agreement.

20. SHOP DRAWINGS: Subcontractor shall, at its own expense, prepare and submit to Contractor such shop drawings, samples, models and other submittals for the merchandise or services as may be requested by Contractor. Such shop drawings, samples, models and other submittals shall be approved in writing by such persons as Contractor may designate before Subcontractor proceeds under this Agreement. No approval of any submittals nor the making of any payment to Subcontractor shall constitute an acceptance of any merchandise or services or impair Contractor's right of inspection or rejection or any other rights or remedies to which Contractor may be entitled, or relieve Subcontractor from any of its obligations or warranties hereunder.

21. OWNERSHIP OF DOCUMENTS: All plans, drawings, reports, manuals, specifications, test data or other documents or information prepared by Subcontractor pursuant to this Agreement shall be furnished to Contractor and shall be the property of Contractor, and Contractor shall have the unlimited right to publish, transfer, sell, license and use all or any part of such documents or information without additional payment to Subcontractor.

22. DEDUCTIONS AND SET-OFF: Any sums payable to Subcontractor shall be subject to all claims and defenses of Contractor or any of its affiliated companies, whether arising from this or any other transaction or occurrence, and Contractor may set-off and deduct against any such sums all present and future indebtedness of Subcontractor or any of its affiliated companies to Contractor or any of its affiliated companies.

23. DEFECTIVE MERCHANDISE OR SERVICES: Notwithstanding prior payment, Contractor reserves the right to return, at any time, for full credit at Subcontractor's expense (including but not limited to cost of packing and transportation to and from source) and risk, all or any part of the Merchandise or Services or Work furnished by Subcontractor which is defective in material or workmanship or which differs in any way from any drawings, specifications and warranties herein contained or implied by law or which otherwise does not conform to the requirements of this Agreement, and Subcontractor shall have no right thereafter to cure such defects or failure to conform to such specifications and warranties or the subcontract documents. Contractor reserves the right, but shall not be obligated, to repair any defects and debit from the Subcontractor any expenses involved when in Contractor's sole judgment the cost of making such repairs would be less than the cost of replacement by Subcontractor or cancellation of this Agreement. Contractor reserves the right, but shall not be obligated, to require Subcontractor to repair or replace, at Contractor's option, defective or non-conforming Merchandise or Services or Work, at Subcontractor's expense. If Contractor returns defective merchandise or services or rejects non-conforming work under this paragraph, Contractor may additionally cancel any remaining portion of this Agreement.

24. INSPECTION: Contractor may inspect and test the Merchandise and Services and Work during manufacture, construction, or preparation and shall have the right to inspect the merchandise or services or work at the time of delivery and/or completion. Multiple inspections shall not be grounds for objection by Subcontractor. Notwithstanding previous inspections by Contractor, if defects or nonconformities for which Subcontractor is responsible under the terms of this Agreement are revealed by subsequent inspection, analysis, manufacturing operations, use or otherwise, Contractor may reject or revoke its acceptance of the merchandise or services or work, in whole or in part, at any time after such defects or nonconformities are discovered or pursue its rights or remedies under this Agreement.

25. PASSAGE OF TITLE: Until Contractor has inspected the Merchandise or Services shipped or Work furnished under this Agreement and has accepted it as being in conformity with this Agreement, Subcontractor's delivery obligation shall not be deemed complete, nor shall title pass to Contractor. Subcontractor represents and warrants to Contractor that Subcontractor shall have good title to the merchandise or services, free and clear of all liens at the time of Subcontractor's delivery or furnishing of the merchandise or services or work.

26. CHANGES: Contractor shall have the right to make changes in this Agreement, but no additional charge will be allowed unless authorized in writing by Contractor. If such changes affect delivery or the price sought by Subcontractor, Subcontractor shall notify Contractor immediately. There shall be no adjustment to the time of delivery or price to be paid for merchandise or services unless and until Contractor signs a change order authorizing the same.

27. CONTRACT AND JURISDICTION: This Agreement and the effect of any contract formed pursuant hereto shall be construed and enforced in accordance with the laws of the State of Ohio.

28. NON-WAIVER: The failure of the Contractor to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions or of the right of Contractor thereafter to enforce each and every such provision.

29. MISCELLANEOUS: (a) All rights granted to Contractor hereunder shall be in addition to, and not in lieu of, Contractor's rights arising by operation of law; (b) any provisions of this Agreement which are typewritten or handwritten by Contractor shall supersede any contrary or inconsistent printed provisions; (c) no modification of the terms of this Agreement shall be valid unless in writing and signed by Contractor; (d) should any of the provisions of this Agreement be declared by a court of competent jurisdiction or any arbitrator to be invalid, such decision shall not affect the validity of any remaining provisions; (e) all of the terms herein shall apply to additional quantities of merchandise or services or work ordered by Contractor except to the extent covered by a new Agreement; (f) this Agreement, together with any information or documents incorporated herein by reference, shall be deemed to contain the entire agreement between Contractor and Subcontractor and to constitute the complete and exclusive expression of the terms of the agreement, all prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter hereof being merged herein.

30. CLAIMS: Subcontractor agrees that it shall not be entitled to recover any damages from Contractor on account of claims for additional compensation, changes, delays, hindrances, interferences, lost productivity, or other impact damages of whatever kind or description unless and until Contractor recovers and collects such damages from Contractor's Customer. Such recovery and collection from Contractor's Customer is an absolute condition precedent to Subcontractor's right of recovery from Contractor. Contractor shall act as a conduit for Subcontractor's claims, and Subcontractor shall be obligated to compensate Contractor for all costs and expenses, including legal and consulting fees and administrative expenses, that Contractor incurs to present Subcontractor's claims to the Contractor's Customer for consideration or payment or to arbitrate, mediate, or litigate such claims. Subcontractor shall furnish all required testimony and documentation to support its claims. Contractor assumes no fiduciary responsibility for prosecution and recovery on Subcontractor's behalf. In the event that Contractor recovers and collects damages from Contractor's Customer on account of Subcontractor's claims through negotiation, litigation, mediation, or arbitration, then Contractor shall tender to Subcontractor the amount actually recovered and collected less the cost of prosecution and administration, and Subcontractor shall accept that amount as payment in full for its claims and damages releasing Contractor from any additional liability or damages on the claims. If the claim is denied or the amount claimed or recovered is not collected, the Subcontractor shall release Contractor from any and all liability for the claims and damages.

31. DISPUTES: At the sole option of Contractor, any and all claims, disputes, controversies, demands, and causes of action of whatever nature, kind or description arising from or relating to this Agreement, including without limitation contract, equity, tort or legal claims, and further including without limitation claims relating to rights of payment or interpretations hereof, shall be submitted to mandatory and binding arbitration in the Cleveland Tribunal of the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The decision and Award of the Arbitrator(s) shall be final and binding on Contractor and Subcontractor, and the decision and Award may be reduced to judgment and enforced in any Court of competent jurisdiction. This agreement to arbitrate shall be specifically enforceable under the

Ohio Arbitration Act and the Federal Arbitration Act. The arbitrator(s) shall decide any issues relating to waiver of rights or timeliness of claims.

32. PRECEDING WORK. Subcontractor, before beginning the Work, shall carefully examine the work of others which may affect the work or the merchandise or services, determine whether it is in a fit, ready and suitable condition for the proper and accurate performance of the work and furnishing of the merchandise or services, use all means necessary to discover defects in such other work, and notify Contractor in writing of any claimed deficiencies which may affect the work or merchandise or services. If such notice is not so given, all such work shall be deemed acceptable to Subcontractor. In case of a dispute as to whether such other work is deficient, Subcontractor nevertheless shall proceed immediately with the Work when notified by Contractor to proceed.

33. CLEAN-UP AND PROTECTION OF WORK. Subcontractor at all times shall keep the project and premises free from rubbish, debris and obstructions caused by its operations (including surplus materials, crates and packing, etc. brought to the premises by Subcontractor or by others for the benefit of Subcontractor). At the time of completion of the work and furnishing of the merchandise or services in each area, Subcontractor shall leave the area "broom clean" and shall remove all of its tools, equipment, scaffolding and surplus materials. Subcontractor shall not damage the work of others by its operations, and shall repair or pay the cost of repairing any such damage done by Subcontractor or Subcontractor's employees, agents, representatives and lower-tiers.

34. DAMAGE OR DESTRUCTION. Subcontractor shall cover and at all times adequately protect the Work and the Merchandise and Services from damage until final acceptance by Contractor's Customer, and shall properly store and protect its own materials furnished to it by others. Subcontractor shall be responsible for any damage to or destruction of the Work, the Merchandise and Services, and any other equipment, tools and personal property at the premises, whether owned, rented or used by Subcontractor or anyone performing any of the work. Subcontractor at its expense shall, as directed by Contractor, replace, repair or restore any thereof which are damaged or destroyed, whether such destruction or damage results from acts of God, fire, public enemy, civil commotion, vandalism, acts of omission or commission by any person, firm or corporation. Risk of loss with respect to the Work, Merchandise or Services shall remain with Subcontractor until final acceptance of the completed Work and the Merchandise or Services. Until such final acceptance, any damage or destruction of the Work and the Merchandise and Services, however caused, shall be made good by Subcontractor at no extra charge or cost to Contractor. Such rework at Subcontractor's expense shall not preclude Subcontractor from making a claim under any insurance maintained for the benefit of Subcontractor, but the right to make or the pendency of such claim shall not give cause to Subcontractor to delay the commencement or completion of such rework.

35. SAFETY. Subcontractor shall require its employees at the premises to wear and use safety and health equipment, to work in harmony with others working at the premises, and to comply with the Contractor's Customer's or Contractor's regulations, and the rules and regulations imposed by law, covering working conditions. Subcontractor warrants and will provide evidence to Contractor, prior to performing work at the project site, of completing the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) 10-hour safety training course. Subcontractor represents and warrants that it will take responsibility for jobsite safety and take proactive measures to address jobsite hazards, up to stopping work until conditions are abated. Contractor shall have the right to furnish any safety or health equipment which Subcontractor fails to provide promptly, and Subcontractor shall upon demand pay Contractor's cost thereof plus 20% for Contractor's overhead and other indirect costs. Subcontractor shall indemnify Contractor for fines, penalties and corrective measures, and damages, and shall reimburse Contractor for costs and expenses, including attorney fees, that result from acts of commission or omission by Subcontractor or its subcontractors or vendors or their assigns or their respective employees and agents in failing to comply with such safety rules and regulations. Subcontractor, immediately after the occurrence of each accident involving injury to or death of any person or damage to property on the Premises or in any way relating to the Work, merchandise or services, shall deliver to Contractor a report thereof, which may be a copy of any accident report delivered to its insurance carrier. Contractor's standard safety policy and requirements are incorporated into this Agreement, which includes the U.S. Department of Labor Occupational Safety and Health Administration.

36. LABORERS ON SITE. Subcontractor's employees shall be skilled in their trades. Any employee of Subcontractor may be refused admittance to the premises or may be requested to leave the premises at any time by Contractor, and Contractor shall not be required to have or to state any reason for such action. In the event that any employee or employees of Subcontractor are so barred from the job, Subcontractor shall immediately replace such employee or employees with employees satisfactory to Contractor. Should any workers performing the Work engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, Contractor may, at its option and without prejudice to any other remedies it may have, after forty-eight (48) hours written notice to Subcontractor, provide any such labor and deduct the cost thereof from any monies then due or thereafter to become due Subcontractor. Further, Contractor may at its option, without prejudice to any other remedies it may have, terminate this Agreement, and shall have the right to enter upon the premises and take possession, for the purpose of completing the Work, and the furnishing of the Merchandise or Services and all of Subcontractor's materials, tools and equipment thereon and to furnish the Merchandise and Services and complete the Work either with its own employees or other subcontractors; and in case of such termination by Contractor, Subcontractor shall not be entitled to receive any further payments under this Agreement or otherwise but shall nevertheless remain liable for any damages which Contractor incurs. If the expenses incurred by Contractor in completing the Work shall exceed the unpaid balance due Subcontractor, Subcontractor shall pay the difference to Contractor, together with any other damages incurred by Contractor as a result of Subcontractor's default.

37. RESERVED GATES: Reserved gates may be established on the premises. If established, Entrance No. 1 shall be utilized by non-union firms, and their subcontractors, employees, suppliers and material handlers. Entrance No. 2 shall be utilized by union firms, and their subcontractors, employees, suppliers and material handlers. These entrances, if established, shall not be misused. The entrances shall also be observed by the management of Subcontractor and its subcontractors, suppliers and material men as well as all other employees. In the event that Subcontractor violates the provisions of this Section, Contractor shall have the right, without prejudice to any other rights or remedies it may have, to terminate this Agreement and exercise the remedies provided in Section 18 above or provided elsewhere in this Agreement.

38. UNION CONTRACTS / PREVAILING WAGE: Subcontractor shall be bound by the terms, conditions, and wage rates contained in any and all of the collective bargaining agreements between Contractor and any union, which are incorporated by reference into this Agreement. Wage rates and benefits paid to employees of Subcontractor and its lower-tiers at the work site shall be no less than the prevailing wage rates in the locality where the work is performed or otherwise applicable to the project.

39. Non-Solicitation: Subcontractor agrees not to, directly or indirectly, solicit for contracting, or to otherwise engage Contractor's Customer, for the performance of merchandise or services or work of any kind for Contractor's Customer during the term of this Agreement and for a period of one (1) year after the termination of this Agreement. Because the actual damages that Contractor would sustain if Subcontractor breached its obligation under this section are uncertain and would be impossible or very difficult to ascertain accurately, the parties agree in good faith that the sum equal to 50% of the payment Subcontractor receives from Contractor's Customer, would be reasonable and just compensation for the harm caused by such breach. Therefore, Subcontractor promises to pay and Contractor agrees to accept that sum as liquidated damages, and not as a penalty, in the event of each breach of this non-solicitation provision.

40. Confidential Information: During the course of performance of this Agreement, Subcontractor and its respective personnel may have access to Contractor's Confidential Information. "Confidential Information" includes, but is not limited to, technical information, software, client lists, pricing policies, marketing data, business plans, research and development activities, and any other proprietary information that affords or may afford the disclosing party a competitive advantage in the marketplace. Subcontractor agrees not to use or disclose to any third party any Confidential Information unless such use or disclosure is authorized by Contractor. Subcontractor must protect the confidentiality of the Confidential Information in the same manner that it protects its own confidential information of similar kind or nature, provided that such protection will not be less than a reasonable standard of care. Access to the Confidential Information must be restricted to Subcontractor's personnel with a need to know. In the event Subcontractor receives a subpoena or other valid administrative or judicial process or order, requesting or requiring Contractor's Confidential Information, Subcontractor must promptly notify Contractor of such receipt and may, thereafter, comply with such subpoena, process or order to the extent obligated by law. All Confidential Information made available to Subcontractor, or its personnel, including copies, must be returned to Contractor or destroyed upon the first to occur of (a) termination of this Agreement or (b) Contractor's request. Subcontractor is not required to destroy information is is legally obligated to preserve or retain to comply with any federal, state, or local law, ordinance or regulation. The parties agree that a breach of any of the promises contained in this section cannot be wholly compensated for by monetary damages and that any remedy at law would be inadequate. Contractor may seek and obtain a temporary restraining order, preliminary injunction, permanent injunction, or other equitable relief restraining Subcontractor from violating any of the provisions of this section.

41. Work Product: All reports, studies, designs, documents, work papers, drawings, notebooks, blueprints, photographs, electronic records, samples, prototypes, Deliverables of a similar nature, and any other information or materials in any form or format arising out of Subcontractor's performance of the Work (the "Work Product") will be the sole property of Contractor and will become part of the Confidential Information to be protected under this Agreement. Subcontractor hereby transfers and assigns the Work Product to Contractor.

42. Ownership of Intellectual Property Rights: Contractor shall own all Intellectual Property Rights in the Work Product (the "Work Product IP"). Subcontractor hereby transfers and assigns the Work Product IP to Contractor. To the extent Supplier has any moral rights with respect to the Work Product IP that cannot be assigned under applicable law, if permitted by applicable law, Subcontractor waives such moral rights and consents to any action by Contractor that would violate such moral rights in the absence of such consent. "Intellectual Property Rights" means the rights in and to all (1) U.S. and foreign patents and patent applications claiming any inventions or discoveries made, developed, conceived, or reduced to practice, including all divisions, substitutions, continuations, continuation-in-part applications, and reissues, re-examinations and extensions thereof; (2) copyrights; (3) unpatented information, trade secrets, data, or materials; (4) mask work rights; and (5) any other intellectual or other proprietary rights of any kind now known or recognized in any jurisdiction.

ACCEPTED AND AGREED TO:

SUBCONTRACTOR: _____

By: _____

Title: _____

Date: _____

CONTRACTOR: AIR ENTERPRISES LLC

By: _____

Title: _____

Date: _____

SCHEDULE 1

[List All Subcontract Documents]