

## SUBCONTRACT STANDARD TERMS AND CONDITIONS

Work by and between The Tri-M Group, LLC (“Contractor”) and (“Subcontractor”) for and in consideration of the mutual promises and covenants herein contained, Contractor and Subcontractor agree as follows:

**SECTION 1. SCOPE OF WORK:** Subcontractor covenants, promises and agrees to furnish all labor and material and to diligently and fully perform the following scope of work in accordance with the Prime Contract between Contractor and (“Owner”) and in accordance with all plans, specifications, and other contract documents attached to or incorporated into the Prime Contract (“Contract Documents”) which are hereby made a part of this Agreement by reference, for the project (the “Work”).

**SECTION 2. DUTIES OF SUBCONTRACTOR:** Subcontractor is bound to Contractor by the same terms and conditions and to the fullest extent by which Contractor is bound to Owner under the Prime Contract. In the event of any inconsistency between the terms and conditions of the Prime Contract (including any General Conditions), the Contract Documents and this Agreement, the more inclusive provisions as applicable to Subcontractor shall govern. Subcontractor hereby warrants that he has investigated and familiarized itself with all laws and codes applicable to its work; with the availability, cost and suitability of personnel, materials, equipment, utilities, etc.; with the prevailing wage scales (if applicable), working conditions, craft jurisdiction, and existing labor agreements; all site conditions and restrictions, underground conditions, prevailing weather and climatological conditions; and any other factors which may affect Subcontractor’s work. Subcontractor further agrees that Contractor shall not be liable to Subcontractor on any claim for additional payment or additional time or any claim whatsoever if such claims directly or indirectly result from Subcontractor’s failure to investigate and familiarize itself with the conditions under which this Agreement is to be performed. Subcontractor shall comply with all laws, ordinances and regulations relating to the manner of doing the work or to the supplying of the material at the job site, and shall provide safe working conditions for his employees, other employees, and the public.

**SECTION 3. PAYMENT:** Contractor agrees to pay Subcontractor for the full, and complete performance of this Agreement the sum listed on Subcontract (which price is firm and not subject to escalation) and which includes all applicable federal, state, and municipal taxes; and further agrees to make all partial and final payments on account thereof and in accordance with the terms and provisions of this Agreement. Provided Subcontractor’s rate of progress and general performance are satisfactory to Contractor and provided that Subcontractor is in full compliance with each and every provision of this Agreement, Contractor will make partial payments to Subcontractor on Contractor pay estimate form in an amount equal to 90% of the estimated value of work and materials incorporated into the Project (and of materials delivered to the Project site and suitably stored by Subcontractor) and paid to Contractor by Owner, less the aggregate of previous payments, within fourteen (14) days of receipt thereof from Owner or fourteen (14) days after receipt of Subcontractor’s invoice, whichever is later. Final payment will be made within thirty (30) days after Subcontractor’s work has been completed to the satisfaction of Owner and Contractor, and Contractor has received from Owner written acceptance thereof together with payment in full for this portion of the work. All Subcontractor pay estimates must include the Project Name and Subcontract Number. These payments are subject to receipt of such signed lien waivers, affidavits, warranties, guarantees and such other documents as required by the Contract Documents or Contractor, which Subcontractor agrees to execute as a condition precedent to its right to receive payment hereunder.

**The obligation of Contractor to make a payment to Subcontractor under this Agreement, whether a progress or final payment, is also subject to the express condition precedent of payment therefore by Owner to Contractor. Subcontractor knowingly and voluntarily assumes the risk of Owner’s non-payment for Subcontractor’s Work.** Subcontractor acknowledges that in the event payment is not made to Contractor for any reason including, but not limited to, default or insolvency by Owner, Subcontractor shall look exclusively to Owner for payment of any and all funds due under this Agreement. Subcontractor further agrees that delay in payment for non-payment by Owner does not create any separate obligation of Contractor to pay regardless of the extent of the delay. No partial or final payment shall constitute acceptance by Contractor of the work or material for which the partial or final payment is made; nor shall any partial or final payment constitute a waiver of any right to require fulfillment of all the terms of this Agreement. Contractor expressly reserves the right to issue joint checks to Subcontractor and its materialmen, suppliers, or subcontractors, or any of Subcontractor’s creditors having potential lien rights and/or claims against the work, for any payments that are, or may become, due and owing by Contractor to Subcontractor under this Agreement. Contractor may deduct from amounts due or to become due to Subcontractor on this Project any sum due or to become due to Contractor from Subcontractor whether or not said sums are in any way related to this Agreement or Project.

**SECTION 4. TIME OF PERFORMANCE:** Time is of the essence, and Subcontractor agrees to keep itself thoroughly informed as to the overall progress of the Project; to commence and to prosecute the work undertaken hereunder in a prompt and diligent manner whenever such work, or any part of it, becomes available, or at such time or times as Contractor may direct, so as to promote the general progress of the entire Project; and Subcontractor shall not by delay or otherwise interfere with or hinder the work or progress of Contractor or any other subcontractor. In the event of any failure of Subcontractor to complete its work within the required time, Subcontractor hereby agrees to reimburse Contractor for any and all actual and/or liquidated damages that may be assessed against Contractor by Owner, which are directly or indirectly attributable to work caused by Subcontractor’s failure to comply fully with the foregoing provision. Subcontractor also agrees to pay to Contractor such damages as Contractor may sustain by reason of any delay, directly or indirectly, attributable to or caused by Subcontractor, including, but not limited to, recovery of Contractor’s overhead and expense related to the managing and supervising of the Prime Contract work. At the request of Contractor, Subcontractor shall perform certain parts of the work before other parts, add extra manpower, or order overtime labor in order to comply with the project schedule, all without an increase in the Subcontract price, unless otherwise specifically provided in the General Conditions. If Subcontractor shall be delayed in the prosecution or completion of the Work by the act, neglect or default of Contractor, the Architect, Owner, or any other subcontractor employed by Contractor upon the Project, or by any damage caused by fire or other casualty for which Subcontractor is not responsible, or by general strikes or lockouts caused by acts of employees, then the time fixed by Contractor for the completion of the Work shall be extended for such period of time as shall be determined and fixed by Contractor as the time lost by reason of any or all of the causes aforesaid. This shall be Subcontractor’s sole and exclusive remedy for such delay and in no event shall Contractor be responsible for any increased costs, charges, expenses, or damage of any kind resulting from any such

## SUBCONTRACT STANDARD TERMS AND CONDITIONS

delays. No allowance of an extension of time for performance of this Agreement will be granted, unless a claim therefore is presented to Contractor in writing and within forty-eight (48) hours of the occurrence of the cause thereof, and then only if Contractor agrees to such an extension of time in its sole discretion.

**SECTION 5. CHANGES IN THE WORK:** Contractor may at any time and without invalidating this Agreement, by written order and without notice to surety, make changes in the work herein contracted for consisting of additions, deletions or other revisions, and Subcontractor shall proceed with the work as directed. If said changes cause an increase or decrease in the cost of performance or in the time required for performance an equitable adjustment shall be made when a request is timely made by Subcontractor, but only upon the written approval of Contractor. No extension to Subcontractor's time of performance as a result of changed work shall be allowed under this Subcontract unless authorized by Contractor in writing. The value of the changed work requested by Subcontractor shall include all costs for delay and disruption to Subcontractor's work. Subcontractor shall not be entitled to any additional compensation for delay and disruption caused by the changed work unless such costs are requested and approved by Owner. In no event, shall Subcontractor be entitled to compensation for the collective impact of changed work. Nothing herein shall excuse Subcontractor from proceeding with the prosecution of the work as changed.

**SECTION 6. INSPECTION AND PROTECTION OF WORK:** Subcontractor shall take necessary precautions to properly protect the work of Contractor and other subcontractors from damage caused by operations under this Subcontract. Subcontractor shall cooperate with Contractor and other subcontractors. Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion specifically noting and advising Contractor of potential conflicts between the Work of Subcontractor and that of the Contractor and other subcontractors.

**SECTION 7. WARRANTIES:** Subcontractor warrants and guarantees the work and materials which he performs or furnishes under this Subcontract and agrees to make good, at its own expense, any defect in materials or workmanship which may occur or develop prior to Contractor's release from responsibility by Owner. Subcontractor further agrees to assume, as a direct obligation to Contractor and/or Owner, any guarantees or warranties which would otherwise be the responsibility of Contractor or other subcontractors, when such guarantees or warranties have been cancelled as a result of Subcontractor's operations in performance of this Agreement. Without limitation of the foregoing or other obligations of Subcontractor provided for in the Contract Documents, immediately upon Contractor's demand, Subcontractor, at its own expense, shall repair, replace, restore or rebuild, at Contractor's option, any work in which defects in materials or workmanship may appear, or which is otherwise not in conformance with the other warranties of Subcontractor hereunder, or to which damage may occur because of such defects or lack of conformance, within one (1) year or such longer period as required by the specifications from the date of Owner's and architect's final acceptance of the Project. If Subcontractor fails to comply, Contractor may correct such defect or lack of conformance, as the case may be, and Subcontractor shall immediately reimburse Contractor thereof.

**SECTION 8. INDEMNIFICATION:** To the fullest extent permitted by law, Subcontractor agrees to indemnify, hold harmless and defend Contractor, Owner, architect, all entities Contractor must indemnify pursuant to the terms of the Prime Contract and their agents, employees, representatives, officers, directors, stockholders, members, managers and parent, subsidiary and affiliated companies (the "Indemnified Parties") from and against any and all liability for loss, damage or expense including, but not limited to, attorney's fees for which the Indemnified Parties may be held liable by reason of injury (including death) to any person (including Subcontractor's employees) or damage to any property of whatsoever kind or nature arising out of or in any manner connected with the work to be performed for the Indemnified Parties (including, but not limited to, work performed under this Agreement, work performed under change order, or any such other work performed for or on behalf of the Indemnified Parties, whether performed at the site or not or in any way connected with the use, misuse, erection, maintenance, operation or failure of any machinery or equipment whether or not such machinery or equipment was furnished, rented or loaned by any of the Indemnified Parties, even for and if caused in whole or in part by any act, omission, or negligence of the Indemnified Parties. Subcontractor, hereby expressly and without reservation waives any defense or immunity it may have under any applicable Worker's Compensation laws or any other statute or judicial decision disallowing or limiting such indemnification and consents to a cause of action for indemnity. The indemnification obligation hereunder shall not be construed to negate, abridge, or reduce any other right or obligation of indemnity that would otherwise exist as to any person or entity described in this Agreement. Furthermore, the indemnification obligation hereunder shall not be limited in any way by the amount or type of insurance required to be provided to or for the benefit of an Indemnitee as described in this Agreement.

**SECTION 9. INSURANCE:** Subcontractor shall obtain, before commencement, and maintain until performance in full hereof has been accomplished and final payment has been issued in evidence thereof, full insurance coverage as may be specified in the Prime Contract or required by Contractor, and in amounts not less than those so specified on Exhibit I. All insurance shall be procured at Subcontractor's expense. The policies shall provide waivers of subrogation by endorsement or otherwise, and list as additional insureds both Contractor and Owner of the Project. The additional insured coverage shall be primary and non-contributory to any of Contractor's and Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) CG 20 10 07 04, CG 20 37 07 04. In the event Contractor, in its sole discretion, determines that Subcontractor is not maintaining the insurance required by this Agreement, Contractor shall have the right to immediately terminate this Agreement without any notice to Subcontractor.

**SECTION 10. SEARCHABLE PROJECT:** On Pennsylvania projects, a subcontractor that fails to file a Notice of Furnishing on the Department of General Services publicly accessible Internet website as required by the act of August 24, 1963 (P.L. 1175, No. 497), known as the Mechanics' Lien Law of 1963, may forfeit the right to file a mechanics lien. It is unlawful for a searchable project owner, searchable project owner's agent, contractor, or subcontractor to request, suggest, encourage, or require that a subcontractor not file the required notice as required by the Mechanics' Lien Law of 1963.

## SUBCONTRACT STANDARD TERMS AND CONDITIONS

**SECTION 11. DEFAULT:** In the event Subcontractor fails to comply, or becomes unable to comply, or with reasonable probability (as determined solely by Contractor) will become unable to comply, with any of the provisions of this Agreement; or in the event Subcontractor fails at any time to supply a sufficient number of properly skilled workmen with sufficient materials, equipment or plant of proper quality or fails in any respect to prosecute the work with promptness and diligence; or causes by any action or omission a stoppage of or delay in the work of Contractor or other subcontractor of Contractor; or in the event Subcontractor abandons its work or any part thereof; and such failure, inability or deficiency (as determined solely by Contractor) is not corrected within three (3) days after written demand by Contractor to Subcontractor; Contractor may, in addition to and without prejudice to any other right or remedy, take over and complete the performance of this Agreement, at the expense of Subcontractor; or Contractor may, without taking over the work, immediately and without notice to Subcontractor, furnish the necessary materials and labor through itself or others, to remedy the situation, all at the expense of Subcontractor. Upon any action by Contractor pursuant to this provision, Subcontractor shall not be entitled to further payment on this Agreement until the work has been completed and accepted by Owner and payment therefore has been received by Contractor. If the expense incurred by Contractor exceeds the unpaid balance due, Subcontractor agrees to promptly pay the difference to Contractor together with interest thereon at the rate of the prime rate plus 2% per annum until paid, and Contractor shall have a lien upon all material, tools, and equipment taken possession of to secure the payment thereof. With respect to expenses incurred by Contractor pursuant to this provision, it is hereby agreed that the costs and expenses chargeable to Subcontractor as herein before provided shall include, without restriction, the cost of materials, labor, subcontracts, purchase orders, transportation, equipment and expense thereon, supplies, services, insurance, taxes, appliances, tools, utilities, power used or consumed, supervision, administration, job overhead, travel, attorney's fees, legal and accounting fees and expenses, Contractor's general overhead as allocated to the work and other costs and expenses incurred or sustained by Contractor, plus ten percent (10%) profit on the actual cost of the work performed as well as on the amount of claims paid by Contractor for Subcontractor or for which it deems itself liable. In the event the employment of Subcontractor is terminated by Contractor for cause under this provision and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience.

**SECTION 12. TERMINATION FOR CONVENIENCE:** Contractor may, at any time, terminate this Agreement in whole or in part for Contractor's convenience and without cause. Termination by Contractor under this paragraph shall be by notice of termination delivered to Subcontractor specifying the extent of termination and the effective date of such termination. Subcontractor shall recover as its sole remedy payment for work properly performed in connection with the terminated portion of the work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with Contractor's instructions. Subcontractor hereby waives and forfeits all other claims for payment and damage, including, without limitation, anticipated profits.

**SECTION 13. DISPUTE RESOLUTION:** The validity, interpretation and effect of this Agreement shall be governed by laws of the Commonwealth of Pennsylvania without consideration of its choice of law analysis. Any dispute between the parties related to this Agreement shall be determined by the Pennsylvania Court of Common Pleas, Philadelphia County, with the parties hereby consenting to such venue as the sole forum for such disputes except as otherwise noted. Subcontractor hereby consents to the personal jurisdiction of the Courts of Commonwealth of Pennsylvania. As a part of the consideration given by the parties hereto, the parties agree to waive their right to a jury in any such matter. In the event of any action before the court, the court shall award reasonable attorneys' fees and expert costs, if any, to the substantially prevailing party. Contractor, at its sole discretion, may elect to subject disputes arising out of this Agreement to resolution by mediation, arbitration, or litigation or to require that Subcontractor follow the dispute resolution procedures set forth in the Prime Contract. This election may be made at any time by Contractor. Unless otherwise agreed by the parties at the time of such election, the rules governing mediation or arbitration invoked by Contractor shall be the Construction Industry Dispute Resolution Procedures of the American Arbitration Association. Subcontractor hereby waives the right to elect the method of dispute resolution and agrees that this waiver is supported by sufficient and appropriate consideration. In the event of an election of arbitration, the Arbitrator(s) shall have the exclusive power to determine issues of arbitrability. Such arbitration shall be final and binding upon the parties. The arbitrator(s) shall award reasonable attorneys' fees, arbitration costs and expert costs, if any, to the substantially prevailing party. In the event of any claim or dispute between Contractor and Subcontractor, Subcontractor shall proceed diligently with performance of the Work, including that in dispute, and Contractor shall continue to make payments in accordance with this Agreement.

**SECTION 14. SAFETY.** Subcontractor will follow all The Tri-M Group, LLC safety requirements specified in The Tri-M Group's Safety, Health, and Environmental Policies and Procedures Manual.

**SECTION 15. INDEPENDENT CONTRACTOR:** Subcontractor certifies that he is "an independent contractor" subject, as an employer, to all applicable statutes and regulations with respect to such status.

**SECTION 16. SEVERABILITY:** In the event any provision of this Agreement shall be held invalid or unenforceable, it shall be deemed modified only to the extent necessary to make it lawful. To effect such modification, said provision shall be deemed deleted, added to and/or rewritten, whichever shall most fully preserve the intentions of the parties as originally expressed herein.

**SECTION 17. WAIVER:** No failure or delay on the part of any party hereto in the exercise of any right hereunder will impair such right or be construed to be a waiver of, or acquiescence in, any breach or default, nor will any single or partial exercise of any such right preclude other or further exercise thereof or of any other right.

**SECTION 18. ENTIRE UNDERSTANDING:** This Agreement (including documents specifically referenced in this Agreement) represents the entire understanding among the parties hereto with respect to the subject matter hereof, and this Agreement supersedes all previous representations, understandings, or agreements, oral or written, between the parties with respect to the subject matter hereof and cannot be modified except by a written instrument signed by the parties hereto. In reaching the agreements in this Agreement, neither party has relied upon any representation or promise, oral or written, except those set forth herein.

## SUBCONTRACT STANDARD TERMS AND CONDITIONS

### **Exhibit I - INSURANCE PROVISIONS**

Certificate Holder:                   The Tri-M Group, LLC  
                                                  206 Gale Lane  
                                                  Kennett Square, PA 19348

Workers' Compensation and Employers Liability Insurance in all jurisdictions where operations will be conducted with the following minimum limits of liability and coverage endorsements. *All policies (except Workers' Compensation) shall name The Tri-M Group, LLC., its parent(s), subsidiary (ies) and affiliated companies, their respective officers, directors, stockholders, employees, the project owner, and agents as additional insured.*

#### **Workers Compensation – Coverage A – Statutory Coverage**

##### **Employers Liability**

\$1,000,000 Each Accident  
\$1,000,000 Each Employee by Disease  
\$1,000,000 Policy Limit by Disease

The policy shall be endorsed to contain the following coverage endorsements:

- USL&H coverage endorsement
- Waiver of Subrogation where permitted by law
- Alternate Employer Endorsement

**Commercial General Liability** with the following minimum limits of liability and coverage endorsements.

\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury and Advertising Injury Liability  
\$ 50,000 Fire Damage  
\$ 10,000 Medical Expense.

The policy shall be endorsed to contain the following coverage endorsements:

- Contractual liability must be included
- Waiver of Subrogation
- Severability of Interest

If work is to be conducted within 50' of a railroad or railroad right-of-way, any exclusions relating to railroads must be deleted from both the exclusions section and the definition of an insured contract. Evidence that the exclusions have been deleted must be provided to The Tri-M Group, LLC.

**Commercial Automobile Liability** with the following minimum limits of liability and coverage endorsements.

\$1,000,000 Each Accident

The policy shall be endorsed to contain the following coverage endorsements:

- Coverage must be included for "any auto"
- Waiver of Subrogation
- Severability of Interest

If work is to be conducted within 50' of a railroad or railroad right-of-way, any exclusions relating to railroads must be deleted from both the exclusions section and the definition of an insured contract. Evidence that the exclusions have been deleted must be provided to The Tri-M Group, LLC.

## SUBCONTRACT STANDARD TERMS AND CONDITIONS

### **Umbrella Excess Liability \$10,000,000**

The limits may be satisfied by a combination of Primary and Umbrella or Excess Liability Policies.

All policies (except Workers' Compensation) shall name The Tri-M Group, LLC., its parent(s), subsidiary (ies) and affiliated companies, their respective officers, directors, stockholders, employees, the project owner, and agents as additional insured. The current edition of form CG 20 10 (AI endorsement applicable to ongoing operations) and the current edition of form CG 20 37 (AI endorsement applicable to completed operations) shall be attached to the general liability policy. The policies shall be endorsed to provide coverage to these Additional Insureds on a primary (non-contributory) basis without seeking contribution from any other insurance or self-insurance available to the Additional Insured.

Contractor shall furnish to The Tri-M Group, LLC insurance certificate in a form acceptable to The Tri-M Group, LLC evidencing compliance with the foregoing requirements and stating that the Insurers will provide 60 day written notice of cancellation or material alteration in any of the require policies of insurance. Copies of the additional insured endorsements must be attached to the certificate of insurance.

All policies shall be written on an occurrence basis. Claims made policies will not be acceptable.

If requested by The Tri-M Group, LLC, the contractor will provide The Tri-M Group, LLC with certified copies of the policies within 30 days of the request.

If any of the policies contain deductibles or self-insured retentions, the deductibles or self-insured retentions will be the sole responsibility of the contractor and coverage will apply to The Tri-M Group, LLC as though the policies were written on a "first dollar" basis.

All policies shall be written with insurers acceptable to The Tri-M Group, LLC. and have A.M. Best ratings of A-VII or better.

All primary casualty policies (GL, Auto, WC) should provide for Waiver of Subrogation in favor of The Tri-M Group, LLC. This can be accomplished through endorsements specific to The Tri-M Group, LLC, or through blanket waiver endorsements.

GL policies should note that the coverage supplied by the sub is primary and non-contributory.

The X,C,U language should be amended to say that X,C,U exclusions must be deleted; or, put another way X,C,U exclusions not permitted.