

## **GEM INC. MASTER TERMS AND CONDITIONS FOR CONSULTANT CONTRACT AGREEMENTS**

Consultant hereby agrees to be bound by the following terms and conditions (the “**Agreement**”), which Agreement is incorporated into the contract order issued by Contractor to Consultant to which this Agreement applies (the “**Contract**”). For purposes of this Agreement, “**Contractor**” means GEM Inc. or any affiliate or subsidiary thereof issuing the Contract; “**Consultant**” means the person or entity named as the “Vendor” on the applicable Contract that is furnishing the Services; “**Owner**” means the person or entity with which Contractor has entered into a contract relating to the Project and, if such person or entity is not the owner of the Project, shall include the Project owner; “**Project**” means the project identified in the applicable Contract; and “**Services**” means the services and any related goods or materials related to the Project that is the subject matter of the Contract.

### **1. SERVICES.**

Consultant shall perform the services listed in the Contract for the Project in a good, professional, and workmanlike manner. If so requested by Contractor, Consultant shall promptly replace or withdraw any employee or agent performing the Services if, in the opinion of the Contractor, such performance is unsatisfactory. Said replacement or withdrawal shall be at no additional cost to Contractor. Consultant shall not employ, contract with, or use the service of any architect, engineer, consultant, special contractor, or other third party in connection with the performance of the Services without the prior written consent of Contractor (any such approved third parties hereinafter Consultant’s “**Agents**”). Consultant shall cooperate with Contractor and shall be bound to perform the Services in the same manner and to the same extent that Contractor is bound by the contract it has with the Owner to perform such services for Owner (the “**Owner/Contractor Agreement**”), available upon request. With the exception of an emergency, Consultant’s employee(s) and Agents shall not have direct communication with Owner without first receiving the explicit permission of the Contractor site manager for the Project. Any quality concerns or issues related to the Project shall only be identified to the Contractor site manager to be promptly and properly addressed. Consultant’s employee(s) and Agents shall perform the Services in the best interests of Contractor and Owner and shall not willingly cause any ill-will or damage to Contractor’s or Owner’s business or reputation.

### **2. REPRESENTATIONS AND WARRANTIES.**

Consultant represents and warrants:

- (a) that Consultant and each of its Agents is qualified to do business and is duly licensed, if required, in the state where the Project is located;
- (b) that Consultant’s employees and Agents performing the Services are fully qualified, licensed as required, and skilled to perform the Services;
- (c) that the Services furnished by Consultant, its employees and its Agents hereunder shall conform to all applicable laws, ordinances, regulations, and building codes and any and all applicable plans and/or specifications furnished by Contractor, or by others at Contractor’s direction or request, to Consultant during the term of the Agreement;
- (d) that all documentation (regardless of format) prepared by Consultant and Consultant’s Agents and provided to Contractor or Contractor’s other consultants shall be in accordance with the highest professional standards, shall be free from errors or omissions, and shall be complete in every respect. Consultant shall be fully responsible for the cost of changes resulting from errors, omissions, ambiguities, coordination problems, and other defects in the documentation.
- (e) that Consultant will comply with all laws, ordinances, codes, rules, and regulations of federal, state, county, and/or municipal governmental entities (including code and fire officials) having jurisdiction over Consultant, the Services, the Project, and/or the Project site (collectively, “**Laws**”), including but not limited to those relating to safety, health, discrimination in employment, fair employment practices or equal employment opportunity, and with the requirements of the Fire Underwriters with respect thereto.

### **3. PAYMENTS.**

As compensation for the Services under the Agreement, Contractor agrees to pay Consultant the sum set forth in the Subcontract for furnishing the Services described or referenced in the Agreement. Unless otherwise agreed in writing by Contractor, Contractor shall not pay for or reimburse Consultant for any expenses borne by Consultant in connection with its performance of the Services. Unless otherwise provided in the Subcontract, partial payments of undisputed amounts will be made each month in an amount equal to the percentage of completion of the Services for that month. Said monthly payments will be due and payable to Consultant within ten (10) days after receipt by Contractor of its monthly payments from Owner for the Services provided by Consultant. Consultant agrees to furnish any waivers, guarantees, affidavits, or any other documents required by Contractor within ten (10) days of notification of need for the same. If such documents are not furnished within ten (10) days, Contractor may withhold payments currently due until such time as the documents are received. Contractor may deduct or set off from any amount due or to become due Consultant any sum and/or sums owing by Consultant to Contractor arising out of the Agreement or otherwise. In the event of any breach by Consultant of any provision or obligation of the Agreement, or in the event of the assertion by other parties of any claim or lien against Contractor or Owner arising out of Consultant’s performance of the Agreement, Contractor shall have the right to retain out of any payments due or to become due to Consultant an amount sufficient to completely protect Contractor from any and all related losses, damages, or expenses until Consultant has remedied the situation to the satisfaction of Contractor.

### **4. TERMINATION.**

Contractor may, at any time and with or without cause, terminate the Agreement upon seven (7) days’ prior written notice to Consultant. If the termination is without cause, Contractor will, as full compensation to which Consultant shall be entitled, make payment to Consultant for the Services satisfactorily performed prior to the date of termination. Contractor may also terminate the Agreement in whole or in part on written notice to Consultant upon Consultant’s breach of any provision hereof, or in the event of any proceedings by or against Consultant, voluntarily or otherwise, in bankruptcy, insolvency, or due to the appointment of a receiver or trustee, or an assignment for the benefit of creditors of the property of Consultant. Upon receipt of notice of termination, and unless otherwise directed by Contractor, Consultant will: (a) promptly terminate all Services; (b) deliver to Contractor any Work Product completed or in process; and (c) cooperate

with Contractor's reasonable requests in connection with such termination. Termination of the Agreement in accordance with this Section 4 will not affect the provisions of the Agreement that by their nature or otherwise survive such termination and will not limit Contractor's ability to pursue remedies at law or equity.

#### **5. CONFIDENTIALITY.**

Consultant acknowledges that, in the course of this Agreement, it may obtain from Contractor information that is of a confidential or proprietary nature ("**Confidential Information**"), including information that is marked as "Confidential" and that in which Consultant reasonably should know Contractor has a reasonable expectation of confidentiality. Consultant shall treat as confidential and not use for its own benefit or disclose to third persons such Confidential Information, except that Consultant may disclose Confidential Information to its employees and Agents as is necessary for the performance of the Services. If Consultant is or becomes required under compulsion of legal process to disclose Confidential Information, the Consultant will not, unless required by law, order, regulation or ruling, disclose such Confidential Information until the Contractor has first (i) received prompt written notice of such requirement to disclose and (ii) had an adequate opportunity to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information. Consultant expressly recognizes that any breach of the provisions of this Section 1.05 is likely to result in irreparable injury to the Contractor and that money damages may not adequately compensate the Contractor for such breach. Therefore, Consultant agrees that the Contractor shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction not only to obtain damages for any breach of the Agreement, but also to enforce the specific performance of the Agreement by Consultant via a temporary restraining order or permanent injunctive relief and to enjoin Consultant from activities in violation of Section 5 of this Agreement.

#### **6. INDEPENDENT CONTRACTOR.**

Consultant's status shall be that of an independent contractor and not that of an agent or employee of Contractor. Consultant shall not hold itself out as, nor claim to be acting as, an employee or agent of Contractor. Accordingly, Consultant shall not participate in any employee benefit plans or programs of Contractor, and Consultant's engagement shall be governed by the Agreement, rather than by Contractor's employment policies. Consultant is not authorized to, and shall not, make or undertake any agreement, understanding, waiver or representation on behalf of Contractor.

#### **7. COMPLIANCE WITH LAWS.**

Consultant shall, at its own expense, comply with all applicable laws, ordinances, codes, rules, and regulations of federal, state, county, and/or municipal governmental entities having jurisdiction over Consultant, the Services, the Project, or the Project site (collectively, "**Laws**"), in accordance with any standards or specifications referenced or described in the Subcontract, and in conformance with the **Owner/Contractor Agreement**. Consultant shall cause its employees and Agents to observe the working hours, working rules, security regulations, and holiday schedules of Contractor while working at the Project site.

#### **8. OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS.**

All originals, duplicates and negatives of all reports, photographs, charts, programs, back-up information and other documents or materials required to be furnished by Consultant hereunder ("**Work Product**"), shall become the exclusive property of Contractor, and at Contractor's option, Owner and Contractor shall have the unlimited right to publish, transfer, sell, license and use all or any part of such Work Product without payment of any additional royalty, charge, or other compensation to Consultant. Upon request of Contractor, during any stage of the Services, Consultant shall promptly deliver all such Work Product to Contractor. Contractor may use all such Work Product in connection with the design, modification, continuation, renovation, and/or maintenance of the Project. In furtherance of the foregoing, Consultant, for itself and its employees and Agents, hereby unconditionally and irrevocably transfers and assigns to Contractor an irrevocable, royalty-free license to any and all Work Product including, without limitation, all patents, copyrights, trademarks, service marks, or other intellectual property rights. Consultant shall have no copyright or other intellectual property claims or rights against Contractor with regard to Contractor's or Owner's use or modification of the Work Product to continue, complete, maintain, or renovate the Project following termination of the Agreement or otherwise. Upon termination of the Agreement for any reason, Consultant shall deliver all Work Product to Contractor, and Contractor shall have the right to use the same for whatever purposes in the Contractor's discretion are necessary to complete the Project.

#### **9. CONSULTANT'S LIABILITY.**

To the fullest extent permitted by applicable Laws, Consultant shall hold harmless, indemnify and defend Contractor, Affiliates of Contractor, and Owner (and their respective officers, employees, and agents) from and against any and all damages, costs, claims, losses, liens, causes of action, suits, fines, judgments, and expenses (including reasonable attorney's fees expert and consulting fees, and other defense expenses) (collectively, "**Losses**") of any nature, kind or description (including claims for violation or infringement of trademark, patent or tangible property rights relating to the design of the Project) that arise out of or relate to (a) the performance, design, specifications, or Services of Consultant under the Agreement; (b) delay, hindrance and/or disruption damages caused, in whole or in part, by Consultant; (c) bodily injury, sickness, disease, wrongful death or property damage, including loss of use or consequential damages resulting therefrom; (d) any claim, demand, or lien by a vendor, supplier, or Agent of Consultant; and/or (e) any breach of the Agreement, wrongful or negligent act, or error or omission of Consultant, anyone directly or indirectly employed by Consultant, or anyone for whose acts or omissions Consultant may be liable at law, in equity, by statute, or otherwise. Consultant, at its sole expense, shall promptly dispose of all such claims, defend all lawsuits filed against a party indemnified hereunder on the account thereof, pay all judgments rendered against a party indemnified hereunder in such lawsuits (including any prejudgment interest assessments), and reimburse Contractor in cash upon demand for all reasonable expenses incurred by Contractor on the account thereof, including, but not limited to, attorneys' fees, expert witness fees and court costs. Consultant shall not be obligated to indemnify to the extent any Losses are proximately caused by the sole negligence or willful misconduct of Contractor or Contractor's agents, servants or independent contractors who are directly responsible to Contractor, excluding Consultant. 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 Consultant's defense and indemnity obligations under this paragraph shall not be limited in any manner whatsoever by any immunity or limitations of liability afforded to Consultant under workers' compensation laws, constitutions, or any other employee benefit acts. All such immunity and/or limitations of liability, including without limitation any such immunity or liability limitation defenses Ohio Constitution Article 2, § 35 and the Ohio Revised Code, Workers' Compensation Act § 4123.74, are hereby waived by Consultant.

#### **10. INSURANCE.**

Consultant shall carry and maintain at its own cost with such companies as are reasonably acceptable to Contractor all necessary liability insurance (which shall include as a minimum the requirements set forth below or as specified in the Agreement) during the term of the Agreement, for damages caused or contributed to by Consultant, and insuring Consultant against claims that may arise out of or result from Consultant's performance or failure to perform the Services hereunder:

- (a) Workers' compensation and employer's liability insurance to the full extent as required by applicable laws;
- (b) Commercial general liability coverage, including contractual liability and public liability coverage, and naming Contractor as an additional named insured, with limits of not less than \$1,000,000 each person and \$2,000,000 annual aggregate;
- (c) Business automobile liability insurance, naming Contractor as an additional named insured, covering owned, non-owned and leased vehicles with limits not less than \$1,000,000 per person and \$1,000,000 annual aggregate; and
- (d) Excess or umbrella liability of \$2,000,000.

Consultant shall also purchase and maintain professional liability (errors and omissions) insurance (on an occurrence basis) satisfactory to Contractor to protect Consultant and Contractor from claims arising out of the performance of Consultant's professional Services caused by any errors, omissions, or negligent acts for which Consultant is legally liable with limits not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate. Consultant shall keep such insurance in effect for at least three (3) years after completion of the Services. Contractor shall not be named an additional insured on the professional liability policy. If the professional liability 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. Consultant shall require each of its subcontractors and consultants providing professional services to maintain separate professional liability (professional liability) insurance coverages to protect against claims or damages arising out of the performance of their respective services in furtherance of the Agreement. Any and all professional liability insurance policies that are renewed annually or otherwise shall be written and/or endorsed to cover prior acts and also shall be renewed for a period not less than ten (10) years following completion of the Services of Consultant that is the subject of the Subcontract.

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. All policies shall be endorsed to provide a waiver of subrogation in favor of Contractor, Affiliates of Contractor, and Owner, and such other entities as are required by the Owner/Contractor Agreement. Consultant shall provide Contractor with certificates of insurance and, if requested by Contractor, certified copies of the policies of insurance evidencing the coverages and amounts set forth in this Section. Consultant's certificate of insurance shall contain a provision that the coverage afforded under the policy(s) will not be canceled without at least thirty (30) days' prior written notice (hand delivered or registered mail) to Contractor.

#### **11. DISPUTE RESOLUTION.**

At the sole option of Contractor, any and all claims, disputes, and other matters in question arising out of or relating to this Agreement or breach thereof shall be decided in mandatory and binding arbitration in Walbridge, Ohio in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The award of the arbitrator(s) shall be final and binding, and the award may be entered as a judgment by any court of competent jurisdiction. This agreement to arbitrate shall be specifically enforceable under the Ohio Arbitration Act, Ohio Rev. Code Ann. § 2711.01 *et seq.* Alternatively, Contractor, in its sole discretion, may require Consultant to submit such claim, dispute or other matter to the dispute resolution procedures set forth in the Owner/Contractor Agreement with respect to the Project, and such claim, dispute or other matter may, as Contractor deems appropriate, be consolidated with other claims involving common questions of law or fact.

#### **12. ENTIRE AGREEMENT.**

The Subcontract, including this Agreement, constitutes the entire agreement between the parties hereto and supersedes any and all prior or contemporaneous written or oral agreements between the parties with respect to the subject matter hereof. All schedules, attachments, or exhibits, if any, referred to in or attached to the Agreement and/or the Subcontract are and shall be deemed to be an integral part of the Agreement as if fully set forth herein. No modification of this Agreement will be binding on Contractor unless expressly stated in the Subcontract or otherwise agreed in writing by Contractor. The Agreement and the provisions of the Subcontract are intended to supplement and complement each other and shall, where possible, be so interpreted. If, however, any provision of this Agreement conflicts with any provision of the Subcontract, or if there is a conflict within the Agreement or within the Subcontract, the provision imposing the higher quality, greater quantity, or greater duty or obligation on Consultant, or granting greater rights or remedies to Contractor or Owner, shall govern.

#### **13. MISCELLANEOUS.**

- (a) This Agreement and any and all claims, controversies or disputes arising from or relating to this Agreement, shall be governed by and interpreted in accordance with the laws of the State where the Services were performed.
- (b) The waiver by Contractor of any breach of any provision of the Agreement shall not be construed as, or constitute, a continuing waiver, or a waiver of any other breach of any provision of the Agreement. No delay or omission on the part of Contractor in exercising any right hereunder shall operate as a waiver of such right or any other right under the Agreement.
- (c) All rights granted to Contractor hereunder shall be in addition to, and not in lieu of, Contractor's rights arising by operation of law or in equity.

- (d) The provisions of the Agreement are divisible. If any provision of the Agreement is deemed invalid or unenforceable, this shall not affect the applicability or validity of any other provision of the Agreement.
- (e) Consultant shall not assign or subcontract all or any part of its rights or obligations hereunder without the express prior written consent of Contractor. Consultant shall not assign any amounts due or to become due under the Agreement without the written consent of Contractor. No consent to or acceptance by Contractor of any assignment or subcontract shall relieve Consultant of any of its responsibilities under the Agreement. However, Consultant agrees to the assignment of this Agreement to Owner as may be required by the Owner/Contractor Agreement.
- (f) All notices, demands and other communications hereunder shall be in writing and shall be hand delivered, emailed with confirmed receipt, telefax with receipt confirmation or mailed via certified mail to the parties at their respective addresses set forth on the first page of the Subcontract.
- (g) The Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.