

**GEM INC. MASTER TERMS AND CONDITIONS FOR
TESTING SERVICES CONTRACT AGREEMENTS**

1. GENERAL PROVISIONS.

- 1.1. Contractor has entered into an agreement with Owner to procure the services of a testing subcontractor to provide certain testing, analysis, and inspection services as further described herein. For purposes of this Agreement, “**Contractor**” means GEM Inc. or any affiliate or subsidiary thereof issuing the Testing Services Contract; “**Testing Subcontractor**” means the person or entity named as the vendor on the applicable Purchase 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 Purchase Contract; “**Services**” means the testing, analysis, and/or inspection services related to the Project that is the subject matter of the Purchase Contract, including without limitation all work and services reasonably inferable therefrom as being required, and all work and services that are normally and customarily furnished and reasonably necessary, to produce the intended result, whether or not specifically called for in the Purchase Contract; and “**Agreement**” means collectively these terms and conditions, the purchase contract issued by Buyer to Seller (the “**Purchase Contract**”) to which these terms apply, and any other documents incorporated by reference herein, including without limitation the agreement between Contractor and Owner (the “**Prime Contract**”), available upon request. Testing Subcontractor hereby assumes toward Contractor all of the rights, responsibilities, and obligations that Contractor assumes toward Owner in connection with the Project with regard to testing and inspection of work, and Testing Subcontractor agrees and consents to be bound by the Prime Contract documents to the same extent as Contractor is bound thereby, to the extent applicable to the scope of Services covered by this Agreement.
- 1.2. **TEAM RELATIONSHIP** Contractor and Testing Subcontractor agree to proceed with the performance of the Services required for the project on a basis of trust, good faith, fair dealing, and mutual cooperation, and each of them shall take all actions deemed by either reasonably necessary to complete the performance of Services under the Agreement in an economical and timely manner.
- 1.3. **EXTENT OF AGREEMENT** This Agreement represents the entire agreement between Contractor and Testing Subcontractor and supersedes all prior negotiations, representations, and agreements, either written or oral.

2. TESTING SUBCONTRACTOR'S RESPONSIBILITIES.

2.1. SERVICES

- 2.1.1. Testing Subcontractor shall perform the Services under the direction of a professional engineer licensed in the state where the Project is located and in accordance with professional standards and with all applicable laws, ordinances, codes, rules, and regulations of federal, state, county, and/or municipal governmental entities (including code and fire officials) having jurisdiction over Testing Subcontractor, the Services, the Project, and/or the Project site, 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 (collectively, “**Laws**”). All Services shall be reasonably satisfactory to Contractor and shall comply with all applicable local, state, and federal codes, rules, guidelines, and Project requirements.
- 2.1.2. Time is of the essence with respect to completion of the Services. Testing Subcontractor shall perform and complete its Services in accordance with Contractor’s directions and the Project schedule as the same may be amended or supplemented from time to time.
- 2.1.3. Testing Subcontractor shall be solely responsible for the quality, technical accuracy, and coordination of all Services furnished by Testing Subcontractor in connection with the Project and this Agreement.
- 2.1.4. Testing Subcontractor is not authorized to supervise any facet of Contractor’s work or to modify any requirement of the Project specifications or other Agreement documents, nor to approve or accept any portion of Contractor’s work, including labor or materials incorporated in Contractor’s Work. Testing Subcontractor shall not have the right to reject any materials, reject or modify the Contractor’s means and methods, or stop Contractor’s work, unless such right is provided in the Agreement. Testing Subcontractor shall not provide supervision of or direction to Contractor’s personnel or its subcontractors, nor assume responsibility for Contractor’s or its subcontractors’ means, methods, techniques, sequences, procedures of construction, or safety programs.

2.2. REPORTS

- 2.2.1. Testing Subcontractor shall submit all written reports required by Contractor as set forth in the Agreement.
- 2.2.2. Testing Subcontractor shall treat such written reports as confidential documents, and shall distribute any report only to Contractor and any other party authorized in writing by Contractor to receive a copy of such, except that Testing Subcontractor shall distribute reports as required by applicable Laws and provide documents in response to subpoena if required.
- 2.2.3. Testing Subcontractor shall retain, for the benefit of Contractor, copies of all reports, and such supporting data as Contractor requests, for a period of five (5) years following its completion of the Services under, or the length of time required by applicable Law, whichever is greater.

2.3. STANDARD OF CARE

- 2.3.1. Testing Subcontractor shall perform all Services in a manner consistent with the degree of care and skill ordinarily exercised by licensed members of Testing Subcontractor’s industry and reputable members of the testing profession performing similar services in the locality of the Project. No other warranty, either express or implied, is made or intended by the Agreement.
- 2.3.2. Testing Subcontractor shall not be responsible for the errors or omissions of any party or parties involved in the design or manufacture of the Project, or the failure of any contractor or subcontractor of manufacturer to comply with the Project specifications or with the recommendations, written or oral, made by Testing Subcontractor.

- 2.4. SAFETY** Testing Subcontractor has established and maintains written programs and procedures for the safety of its employees, subcontractors, and consultants, and specifically disclaims any authority over or responsibility for the safety of personnel engaged in performance of the Contractor's work at the Project site except that of Testing Subcontractor's employees, subcontractors, and consultants. While at the Project site, Testing Subcontractor's employees, subcontractors, and consultants shall comply with all safety requirements and the procedures of Contractor and Owner.
- 2.5. RIGHT TO SUBCONTRACT WORK** With the prior written approval of Contractor, Testing Subcontractor may subcontract portions of the Services as Testing Subcontractor deems necessary to meet its obligations under the Agreement.
- 2.6. AUTHORIZED REPRESENTATIVE** Testing Subcontractor shall designate in writing a person empowered to act as Testing Subcontractor's representative with respect to its performance under the Agreement. Testing Subcontractor's authorized representative is designated as such in the Agreement and shall have complete authority to bind Testing Subcontractor under the Agreement.

3. CONTRACTOR'S RESPONSIBILITIES.

- 3.1. INFORMATION** Contractor shall provide Testing Subcontractor with the Project documents and other available Project information requested in writing by Testing Subcontractor, as are listed in the Agreement. Contractor shall provide timely notice to Testing Subcontractor of changes made to the Project documents or the Project. Testing Subcontractor acknowledges that all such information is for informational purposes only, and the accuracy and completeness of such information is not warranted by Contractor. Testing Subcontractor acknowledges and agrees that it shall only be entitled to rely upon Owner-furnished information to the same extent that Contractor is entitled to such reliance under the Prime Contract.
- 3.2. ACCESS** Contractor shall provide Testing Subcontractor with reasonable access to the Project site, and shall facilitate its access to all shops, yards, or other sites where materials for the Project are being prepared or stored, so as to assist Testing Subcontractor in its performance of all tasks reasonably necessary for the completion of the Services.
- 3.3. AUTHORIZED REPRESENTATIVE** Contractor shall designate in writing a person empowered to act as Contractor's representative. Contractor's authorized Representative is the Project Manager designated in the Agreement. Such person shall have complete authority to transmit instructions to, receive information and data from, interpret and define Contractor's policies and decisions with respect to the Project, and order, at Contractor's expense, any additional services which may be requested of Testing Subcontractor by Contractor.
- 3.4. NOTICE** Contractor shall provide Testing Subcontractor with sufficient advance notice of the required performance of all services so as to allow Testing Subcontractor a reasonable period of time within which to coordinate the assignment of Testing Subcontractor personnel. The period of such advance notice shall be established by agreement of the parties.
- 3.5. SAMPLES** Contractor shall provide and deliver to Testing Subcontractor, for testing, representative samples of materials Contractor proposes to use, together with relevant data pertaining to those materials, unless such samples are to be obtained by Testing Subcontractor under the Agreement. Contractor shall provide all labor and facilities on and off the Project site as may be needed by Testing Subcontractor to obtain samples, and to store and cure such samples that must remain on the Project site prior to testing. Contractor shall pay the cost of retaining those samples that Contractor requests be retained by Testing Subcontractor.

4. INDEMNITY, INSURANCE, AND WAIVERS.

- 4.1. INDEMNITY** To the fullest extent permitted by Law, Testing Subcontractor shall reimburse, indemnify, hold harmless, and defend Contractor, Contractor's surety, Contractor's affiliates, Contractor's other subcontractors, and Owner, and their respective officers, partners, agents, representatives, consultants, and employees (the foregoing, collectively, the "Indemnitees") from and against any and all claims, liens, mechanics' liens, attested accounts, causes of action, lawsuits, demands, fines, penalties, assessments, losses, or damages of whatever kind or description (including any special, incidental, and consequential damages), costs, and expenses (including legal fees and related costs and expenses, whether incurred in defending claims or in seeking reimbursement and indemnity from Subcontractor or otherwise) (the foregoing, collectively, "Losses") to the extent that such Losses may arise from or relate to Testing Subcontractor's performance under the Agreement, negligence or other wrongful acts, default or breach of this Agreement, or breach of any representation or warranty contained herein. The scope of this indemnity obligation applies to the acts or omissions of Testing Subcontractor, its agents, subcontractors, employees, consultants, and anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Testing Subcontractor, at its sole expense, shall promptly dispose of all such Losses, defend all lawsuits filed against the Indemnitees on the account thereof, pay all judgments rendered against the Indemnitees in such lawsuits (including any prejudgment interest assessed against any indemnitee hereunder), and reimburse the Indemnitees in cash upon demand for all reasonable expenses incurred by them on the account thereof including, but not limited to, attorneys' fees, expert witness fees, and court costs. Testing Subcontractor's obligation to indemnify under this provision shall not apply to any Losses to the extent caused by or resulting from the sole or concurrent negligence or willful misconduct of any of the Indemnitees. However, Testing Subcontractor shall remain obligated to defend the Indemnitees at Testing Subcontractor's expense until such time that it is conclusively determined that the Loss is not the fault of Testing Subcontractor or others from whom Testing Subcontractor is legally responsible. 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 Testing Subcontractor's duty to defend and indemnify Contractor hereunder shall not be limited in any manner whatsoever by any immunity or limitations of liability afforded to Testing Subcontractor under the workers' compensation laws, constitutions, or any other employee benefit acts under laws in any state applicable to the Services. For purposes of this indemnity under Ohio law and for Projects in the State of Ohio, Testing Subcontractor specifically waives any immunity afforded it by Ohio Constitution Article 2, Section 35 and Ohio Revised Code Section 4123.74.

4.2. INSURANCE Unless otherwise agreed in writing by Contractor, Testing Subcontractor shall maintain the following minimum insurance coverages, and shall provide to Contractor a copy of a certificate evidencing such coverage prior to performing any Services under the Agreement.

Workers' Compensation:

State in which Project is located	Statutory
Applicable Federal (e.g. Longshoremen & Harbor Workers)	Statutory

Employer's Liability:	\$500,000	per Accident
	\$500,000	Disease, Policy Limit
	\$500,000	Disease, Each Employee

Commercial General Liability (including contractual liability and public liability coverage):

Bodily Injury:	\$1,000,000	Each Occurrence
	\$1,000,000	Aggregate
Property Damage:	\$1,000,000	Each Occurrence
	\$1,000,000	Aggregate
Products and Completed Operations to be maintained for one year after final payment:	\$1,000,000	Aggregate
Property Damage Liability Insurance shall provide Explosion, Collapse, Underground coverage.		
Bodily Injury:	\$1,000,000	Each Occurrence
	\$1,000,000	Aggregate
Property Damage:	\$1,000,000	Each Occurrence
	\$1,000,000	Aggregate

Personal Injury, with Employment Exclusion deleted:	\$1,000,000	Aggregate
---	-------------	-----------

Business Auto Liability (including owned, non-owned and hired vehicles):	\$1,000,000	Combined Single Limit
--	-------------	-----------------------

The Commercial General Liability policy shall provide that:

- General Aggregate shall be not less than \$1,000,000 and it shall apply in total to this Project only.
- Fire Damage Limit shall be not less than \$50,000 on any one Fire.
- Medical Expense Limit shall be not less than \$5,000 on any one person.

Umbrella/Excess Liability:

- \$1,000,000.00 over primary insurance.
- \$25,000 or less retention for self-insured hazards each occurrence.
- ***Limits sufficient to take total coverage to \$1,000,000

Professional liability (errors and omissions) with a minimum limit of \$1,000,000 for each occurrence and \$1,000,000 annual aggregate.

Contractor and Owner shall be named as primary additional insured(s) on Testing Subcontractor's insurance coverages (other than professional liability coverages). 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. Coverage for Completed Operations must include the Additional Insured(s). All general liability insurance policies shall be endorsed so as to be primary to any liability insurance carried by Contractor and Owner. A copy of this endorsement must be furnished to Contractor. The certificates of insurance shall contain a provision that the coverages afforded shall not be canceled or materially changed without thirty (30) days' prior written notice to Contractor. To the extent that Owner or the Prime Contract requires additional insurance or coverages, then Testing Subcontractor covenants and agrees to furnish such insurance and coverages at no additional expense to Contractor. The greater insurance standards and/or requirements shall govern. All policies shall be endorsed to provide a waiver of subrogation in favor of Contractor and Owner, and such other entities as are required by the Prime Contract. **Name on the Certificate must be the same as that shown on the Purchase Contract, with no exceptions.**

4.3. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.

- 4.3.1. Only if and to the extent the Prime Contract provides for a mutual waiver of consequential damages by Owner and Contractor, Contractor and Testing Subcontractor waive claims against each other for any consequential damages that may arise out of or relate to the Agreement. Testing Subcontractor shall obtain from its subcontractors waivers of consequential damages that correspond to Testing Subcontractor's waiver of consequential damages herein. If so provided in the Prime Contract, this mutual waiver applies to consequential damages due to termination by Contractor or Owner.
- 4.3.2. To the extent the Prime Contract provides for a mutual waiver of consequential damages by Owner and Contractor, damages for which Contractor is liable to Owner are not consequential damages for the purpose of this waiver.

5. PAYMENT.

- 5.1. PAYMENT TERMS** Contractor agrees to pay in accordance with the Agreement for all Services provided by Testing Subcontractor and for all expenses incurred by Testing Subcontractor, subject to holdbacks or deductions for non-conforming Services or as otherwise provided in the Agreement. Payment shall be due thirty (30) calendar days from the date of receipt of the Testing Subcontractor's invoice, conditioned upon Contractor's actual receipt of payment from Owner for the Services of Testing Subcontractor. As a condition to receipt of payment, Testing Subcontractor shall submit waivers of liens and claims and such other documents as may be required by Contractor or Owner. Final Payment shall become due and payable after the Services are completed to the reasonable satisfaction of Contractor, and Testing Subcontractor furnishes all reports. Contractor's receipt of payment from Owner on account of Testing Subcontractor's Services is an express and absolute condition precedent to Contractor's obligation to pay Testing Subcontractor. Testing Subcontractor hereby assumes the risk of default or nonpayment by Owner for any reason whatsoever, including the risk associated with the creditworthiness of Owner. Testing Subcontractor shall not be entitled to recover interest on late or past due payments.
- 5.2. BOOKS AND RECORDS** Testing Subcontractor shall maintain accurate books and records with respect to all time spent and expenditures made with respect to the Project and this Agreement, all in accordance with generally accepted accounting principles applied on a consistent basis. Contractor shall have the right to inspect, copy, and audit such books and records relating to the cost of the Services and Testing Subcontractor's invoices to Contractor.

6. DISPUTE RESOLUTION.

- 6.1. INITIAL DISPUTE RESOLUTION** If a dispute arises out of or relates to the Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association. The location of the mediation shall be the location of the Project. Once a party files a request for mediation with the other party and with the American Arbitration Association, the parties agree to commence such mediation within thirty (30) days of the filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person to the other party and the mediator. 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 Testing Subcontractor to submit such claim, dispute or other matter to the dispute resolution procedures set forth in the Prime Contract 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.
- 6.2. PERFORMANCE CONTINUATION AND PAYMENT** Unless otherwise agreed in writing, Testing Subcontractor shall continue to perform the Services under the Agreement during all dispute resolution proceedings. Contractor shall continue to make undisputed payments in accordance with the Agreement if Testing Subcontractor continues to perform.
- 6.3. MULTIPARTY PROCEEDING** To the extent disputes between Contractor and Testing Subcontractor involve in whole or in part disputes between Owner and Contractor, disputes between Contractor and Testing Subcontractor shall be decided by the same tribunal and in the same forum as disputes between Owner and Contractor.
- 6.4. COSTS OF DISPUTE RESOLUTION** The cost of mediation proceedings shall be shared equally by the parties participating. The prevailing party in any dispute arising out of or relating to the Agreement or its breach that is resolved by any other form of binding dispute resolution shall be entitled to recover from the other party reasonable attorneys' fees, costs, and expenses incurred by the prevailing party in connection with such dispute resolution process.

7. TERMINATION.

- 7.1. TERMINATION BY EITHER PARTY** Either party may terminate the Agreement upon written notice if the other party materially breaches any of its obligations hereunder, through no fault of the terminating party, and fails to cure such breach within seven (7) days of receiving notice thereof.
- 7.2. TERMINATION FOR CONTRACTOR'S CONVENIENCE** Upon seven (7) days' written notice, Contractor may, without cause, terminate the Agreement. If the Agreement is so terminated, Testing Subcontractor may recover from Contractor payment for all Services satisfactorily performed in accordance with the Agreement through the date of termination, subject to the maximum price of the Services set forth in the Agreement, and only to the extent that Contractor actually receives payment from Customer for Testing Subcontractor's Services, and provided that Testing Subcontractor has delivered to Contractor all documents and information prepared by Testing Subcontractor, its consultants, or subcontractors for the Project. Notwithstanding any other provision hereof, Contractor shall not be responsible for Testing Subcontractor's (or its consultants' or subcontractors') lost profits or unearned fees for the terminated portion of the Services.
- 7.3. TERMINATION FOR INSOLVENCY** If Testing Subcontractor becomes insolvent, or makes an assignment for the benefit of creditors, or applies to any tribunal for the appointment of a trustee or receiver of Testing Subcontractor or for any substantial part of its assets, or commences any proceedings relating to Testing Subcontractor under any bankruptcy, reorganization, insolvency, readjustment of debt or liquidation law, or if any such petition or application is filed and any such proceedings are commenced against Testing Subcontractor and Testing Subcontractor by any act consents thereto, or an order is entered appointing any such trustee or receiver or adjudicating Testing Subcontractor bankrupt or insolvent or approving the petition in any such proceedings and such order remains in effect for more than thirty (30) days, or if an order is entered in any proceedings against Testing Subcontractor decreeing its dissolution and such order remains in effect for more than thirty (30) days, Contractor, by notice to Testing Subcontractor, may terminate this Agreement, in whole or in part.
- 7.4.** In the event of any termination of this Agreement by Contractor under Sections 7.1 or 7.3, Contractor shall have the right to exercise any other rights or remedies available at law, in equity, or by statute. In addition, Contractor shall have the right to

finish Testing Subcontractor's Services by whatever method it may deem expedient, including, without limitation, the taking over of Testing Subcontractor's outstanding subcontracts and purchase orders and taking possession of, and using in completing the Services, Testing Subcontractor's instruments of service in connection with Testing Subcontractor's Services. Testing Subcontractor shall not be entitled to any further payment until the entire Project shall have been accepted by Owner, at which time Contractor shall pay to Testing Subcontractor the excess, if any, of the balance of the price of this Agreement as adjusted together with expenses incurred by Contractor over Contractor's cost of completion and all damages of Contractor and others resulting from Testing Subcontractor's default.

8. MISCELLANEOUS PROVISIONS.

- 8.1. ASSIGNMENT** Neither party may assign its interest in the Agreement without the express written approval of the other party. However, Testing Subcontractor agrees to the assignment of this Agreement to Owner as may be required by the Prime Contract.
- 8.2. SEVERABILITY** The partial or complete invalidity of any one or more provisions of the Agreement shall not affect the validity or continuing force and effect of any other provision.
- 8.3. NO WAIVER OF PERFORMANCE** The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of the Agreement or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.
- 8.4. RIGHTS AND REMEDIES** All rights granted to Contractor hereunder shall be cumulative and shall be in addition to, and not in lieu of, Contractor's rights arising by operation of law or in equity.
- 8.5. PRECEDENCE** The Agreement 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 any provision of the other Agreement documents, or if there is a conflict within this Agreement or within any of the Agreement documents, the provision imposing the higher quality, greater quantity, or greater duty or obligation on Testing Subcontractor, or granting greater rights or remedies to Contractor or Owner, shall govern.
- 8.6. GOVERNING LAW** 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 are performed.