

SUBCONTRACTOR AGREEMENT

THIS SUBCONTRACTOR AGREEMENT dated as of _____, 20__, is made by and between **HENNIGAN ENGINEERING, LLC**, a Delaware limited liability company (“Contractor”), and _____, a _____ incorporated under the laws of _____ (“Subcontractor”).

WHEREAS, Contractor regularly engages in the business of business of providing (a) cleaning, testing, inspection, facility maintenance and other professional services and (b) services ancillary to those described in clause (a), in each case, for the to the utility, nuclear, fossil, industrial, commercial, maritime, municipal and military industries (collectively, “Work”) for various customers (each, an “Operator”). The Work is performed subject to terms and conditions which vary from Operator to Operator under an agreement between the respective Operator and Contractor (as applicable, the “Main Contract”).

WHEREAS, Contractor wishes to utilize the resources of Subcontractor to provide **INSERT TYPE OF SERVICES TO BE PROVIDED** and related services as more fully set forth on **Exhibit A** attached hereto (collectively, “Services”), which Services will comprise a portion of the Work performed pursuant to the Main Contract, and Subcontractor represents that it has adequate resources and equipment in good working order and fully trained personnel capable of efficiently providing the Services as part of the Work pursuant to the Main Contract.

NOW, THEREFORE IN CONSIDERATION of the mutual promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as set out below.

1. DEFINITIONS

- 1.1 “Affiliate” or “Affiliates” means any corporation or other entity that, directly or indirectly, is owned or controlled by, owns or controls, or is under common control with, a corporation, partnership, joint venture, limited liability or other entity owning or controlling a Party at the time in question. For the purposes of this Agreement, ownership, direct or indirect, of at least fifty percent (50%) of the capital stock of a corporation carrying the right to vote for or elect directors will be deemed to constitute ownership or control thereof. An entity ceases to be an Affiliate or a Party once that entity ownership or control is directly or indirectly changed so that it no longer qualifies as an Affiliate.
- 1.2 “Agreement” means this Subcontractor Agreement, as originally executed or as may from time to time be amended in writing by agreement between the Parties, and **Exhibit A** attached hereto.
- 1.3 “Claims” means all claims, demands, causes of action, liabilities, damages, judgments, fines, penalties, awards, liens, losses, costs, expenses (including, without limitation, reasonable attorneys’ fees and costs of investigation, defense and litigation) of any kind or character arising out of, or related to, the performance of or subject matter of this Agreement.

- 1.4 “Contractor Group” means (i) Contractor and its parent, subsidiary, affiliated or related companies and subcontractors of any tier (excluding Subcontractor Group), and (ii) the respective officers, directors, managers, employees, agents, consultants and invitees of all of the foregoing.
- 1.5 “Force Majeure” means mean acts of nature including fire, flood, earthquake, storm, hurricane, landslides, lightning, tornadoes, wash-outs, windstorms or other natural disaster, acts of the public enemy, war, invasion, act of foreign enemies, arrest and restraint of rulers and people, blockades, epidemics, explosions, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, riots, terrorist activities, nationalization, government sanction, blockage, boycotts, breakage or accident to machinery or equipment, embargo, industrial disturbances, labor dispute, strike, lockout or interruption or failure of electricity or telephone service, and any other causes similar to those above, which are not within the reasonable control of the Party claiming Force Majeure, and which by the exercise of due diligence such Party is unable to overcome.
- 1.6 “Operator Group” means (i) Operator and its parent, subsidiary, affiliated or related companies and contractors of any tier (excluding Contractor Group and Subcontractor Group), (ii) Operator’s working interest owners, co-lessees, co-owners, partners, joint operators, and joint venturers, if any, and their respective parents, subsidiary and affiliated or related companies, and (iii) the respective officers, directors, managers, employees, agents, consultants and invitees of all of the foregoing.
- 1.7 “Party” or “Parties” means either Contractor or Subcontractor, or both, including their respective Subsidiaries and Affiliates.
- 1.8 “Subcontractor Group” means (i) Subcontractor and its parent, subsidiary, affiliated or related companies and subcontractors of any tier, and (ii) the respective officers, directors, managers, employees, agents, consultants and invitees of all of the foregoing.
- 1.9 “Subsidiary” or “Subsidiaries” of a Party means any corporation, partnership, joint venture, limited liability company or other entity as to which, now or hereafter, 50% or more of the voting power is directly or indirectly owned or controlled by such Party. “Subsidiary” includes corporations qualifying as Subsidiaries as of the effective date of this Agreement, as well as those that qualify as Subsidiaries at any time after the effective date of this Agreement. A corporation, partnership, joint venture, limited liability company or other entity will cease to be a Subsidiary or Affiliate of a Party once such Party no longer controls, directly or indirectly, 50% or more of the voting power of such entity.

2. TERM OF THE AGREEMENT

This Agreement will become effective upon signing by both Parties and will remain in force until terminated in accordance with Article 14; provided, however, neither Party will by the termination of this Agreement be relieved of its respective obligations and liabilities (excepting only the provision of future Services) arising from or related to the Services provided prior to the date of such termination.

3. INDEPENDENT CONTRACTOR

- 3.1 It is agreed that Subcontractor is an independent contractor and that neither Subcontractor nor anyone employed by Subcontractor will be deemed for any purpose to be an employee, agent, partner, servant or representative of Contractor or Operator.
- 3.2 Subcontractor agrees that it will not appear on behalf of Contractor (or otherwise represent the interests of Contractor) before the Operator or before any officer or employee of a government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such Operator, government, department, agency, or instrumentality without the express prior written consent of Contractor.

4. PAYMENT FOR SERVICES

- 4.1 Contractor will pay Subcontractor for the provision of the Services according to the prices and rates contained in **Exhibit A**. These prices and rates will remain firm during the term of this Agreement, provided, however, that such prices may be requested to be amended by Subcontractor upon ninety (90) days prior written notice to Contractor; provided, however, that the prices will not be increased or decreased due to need for more time to perform the Services or any change in the cost of any material, services or labor, whether they result from changes in government regulations (including technical regulations that may affect the Services, including without limitation, those related to payment of taxes, charges or fees) or otherwise.
- 4.2 Contractor will pay the undisputed portion of Subcontractor's invoices within the earlier of 30 days from Contractor's receipt of payment from Operator or 60 days from Contractor's receipt of invoice from Subcontractor, but in no event will Contractor be required to pay in less than 30 days from Contractor's receipt of Subcontractor's correct invoice. Contractor may withhold disputed amounts of payments if Contractor in good faith disputes an invoice, and Contractor will notify Subcontractor of the dispute and pay the undisputed portion.
- 4.3 Payment is required in US Dollars in the form of a check or through a wire.
- 4.4 On termination of this Agreement all amounts due in compensation for the Services already provided will become immediately due and payable to Subcontractor, less any amounts for which Contractor is entitled to hereunder.

5. OBLIGATIONS OF THE PARTIES

- 5.1 Subcontractor will be deemed to have full knowledge of the provisions of the Main Contract and acknowledges that a written copy was previously furnished to it (with certain commercial information redacted). In addition to complying with the terms of this Agreement, Subcontractor will comply with all provisions of the Main Contract to the extent the provisions relate to the Services or any other work or services performed under this Agreement, and to the same extent as required by Contractor thereunder. The Main Contract, including all of its provisions, terms and conditions, are made a part hereof by specific reference and will be fully applicable to and binding upon Subcontractor to the extent they relate to the Services, including without limitation,

provisions relating to warranties, performance standards and requirements, liens and payment conditions, environmental conditions, breach, termination, default, force majeure, ownership and use of work product, intellectual property, safety and health standards, drug policy, and confidentiality of information. The Parties will interpret this Agreement and the Main Contract so as to give each of their provisions equal weight. However, in the event of any conflict between this Agreement and the Main Contract, the Main Contract will control.

- 5.2 Subcontractor will perform the Services diligently, efficiently, and in a good, safe and workmanlike manner, and will exercise all due care, and use all the experience and know-how of any reputable subcontractor experienced in work of a nature and scale commensurate with the Services.
- 5.3 Except as otherwise specifically provided for in this Agreement, or as otherwise agreed in writing, Subcontractor will have in relation to the provision of Services under this Agreement the same duties, responsibilities, obligations and liabilities Contractor has in respect of Contractor's Work under the Main Contract with an Operator. Subcontractor warrants that (a) the Services, equipment, materials and/or products to be provided pursuant to the provisions of this Agreement will conform to the specifications, performance obligations and deadlines set forth herein, in **Exhibit A** and in the Main Contract, (b) Subcontractor's facilities, equipment, personnel, methods, operations and procedures are suitable for performance of the Services to be provided, and (c) Subcontractor possesses all necessary expertise, adequate resources and equipment and fully trained personnel to perform the Services in compliance with all applicable specifications, standards and other requirements of this Agreement, the Main Contract, and applicable law, rules and regulations. In the event that Subcontractor's Services, equipment, materials and/or products are defective in that they fail to comply to the foregoing standards, then Subcontractor at Contractor's sole discretion (i) will repair such defective Services as soon as possible, but in any event within ten (10) days of receipt of notification from Contractor, and/or (ii) will replace such defective Services, equipment, materials, or products with conforming Services, equipment, materials or products as soon as possible, but in any event within ten (10) days of receipt of notification from Contractor.
- 5.4 In the event Subcontractor is not the manufacturer of any goods provided as part of the Services, Subcontractor will obtain assignable warranties for such goods from its vendors and suppliers, which it will pass-through or assign to Contractor, and Subcontractor will cooperate with Contractor in the enforcement of such warranties. If a manufacturer's warranty is not assignable, or no pass-through or assignment is made, then Subcontractor will assume the responsibility of the warranty.
- 5.5 Subcontractor warrants clear title to all goods incorporated into the Services, free from any and all liens, claims or other encumbrances.
- 5.6 Subcontractor will provide all labor, equipment, supplies and/or materials commercially reasonably required for the execution, completion and maintenance of the Services as more fully described in **Exhibit A**.
- 5.7 Subcontractor will keep clean and secure the location(s) where the Services are to be performed and all machinery, equipment, installations, materials, supplies and all other

items related to the Services. Unless the Parties agree otherwise in writing, from the commencement date of the Services and until their final acceptance by Operator, Subcontractor will be responsible, at its own cost, expense and for its account, for providing full and adequate supervision, night lighting, monitoring and protection of the Services and related materials and equipment, and will provide all warnings (including signage), notices, and any other forms of notifications as may be applicable or required to accomplish the Services in a clean, proper and safe manner.

- 5.8 Subcontractor will provide sufficient staff at all times to ensure performance and completion of the Services in accordance with the provisions hereof. Subcontractor will ensure that all staff and labor employed to perform the Services will be competent, duly qualified, and skilled and have sufficient experience for the work to be performed, in accordance with the industry practices in the relevant area.
- 5.9 Subcontractor, and its subcontractors and/or suppliers, as employers of the staff and labor they use to perform the Services, will be the only parties liable for all obligations under applicable labor and Social Security legislation under the law with regard to the staff and labor that they employ to render services that are directly or indirectly linked to performance of the Services. Subcontractor will defend and hold Contractor Group harmless from any and all Claims threatened or brought by any of Subcontractor's employees or by any employee of Subcontractor's subcontractors or suppliers, and will defend, indemnify and hold harmless Contractor Group for any sums, losses or damages incurred as a result of said Claims, including all attorneys' fees and other expenses incurred as a consequence thereof.
- 5.10 Subcontractor will, prior to the beginning of any Services, be fully licensed and authorized to provide the Services under the law of the state in which the Services are to be performed.
- 5.11 Subcontractor will immediately notify Contractor of any accident that occurs during performance of the Services and of any event that may have an adverse effect on the timely performance of the Services, compliance with the deadlines and/or any other issues related to the satisfactory performance of the Services. If Subcontractor has reason to believe that the Services may not be performed in accordance with the schedule specified in **Exhibit A**, it will notify Contractor as soon as possible of: (a) the cause of the delay; (b) the effects on and changes estimated by Subcontractor on the completion schedule and other aspects of the Services; and (c) the measures that Subcontractor considers appropriate to avoid, rectify or otherwise resolve the delay. Subcontractor will not be entitled to adjust the amount of compensation due for its Services under this Agreement or the schedule of the Services on account of said measures to the extent that the effect or delay is attributable, in whole or in part, to any acts or omissions of Subcontractor Group.
- 5.12 Subcontractor will immediately notify Contractor of any Force Majeure event or of any stoppage, dispute, lawsuit or any other circumstance that may affect or delay performance or completion of the Services.
- 5.13 Subcontractor will perform the Services in accordance with all Contractor and Operator safety and quality assurance requirements made available or delivered to Subcontractor electronically or in writing.

- 5.14 Subcontractor will conduct its operations in accordance with all applicable laws, rules, regulations, authorities, decrees, and government orders of the local, state and federal authorities having jurisdiction over the area in which the Services are provided (including any manufacturing or fabrication facilities). Subcontractor warrants that all Services will be provided in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended from time to time, and of regulations and orders of the Administrator of the Wage and Hour Division promulgated under Section 14 thereof, and in accordance with all applicable local, state and federal laws and regulations governing general conditions for labor employed in the provision of such Services.
- 5.15 Subcontractor warrants the Services to comply strictly with this Agreement and with all parts of the Main Contract applicable to the Services.
- 5.16 Subcontractor will, within twenty-four hours after written notice from Contractor, proceed to take down and remove from the premises where the Services are being performed all portions of the work and all material, which Contractor will deem as unsound or improper or which fails to conform in any way to Main Contract requirements. Subcontractor will make good all such disapproved work, equipment, and facilities and restore all other work damaged or destroyed in removing or making good such disapproved items, all at Subcontractor's sole risk and expense. However, Subcontractor will not remove any other materials from the project site without Contractor's written permission.

6. VARIATIONS IN THE SERVICES

- 6.1 Subcontractor will notify Contractor if it is able and willing to make such variations in the Services, so far as within the scope and capability of Subcontractor, whether by way of addition, modification or omission, as may be:
- (a) requested by Operator in accordance with the Main Contract and confirmed in writing to Subcontractor by Contractor; or
 - (b) agreed to be made by Operator and Contractor (which agreement will not be made unless Contractor has first secured the written agreement of Subcontractor to such addition, modification or omission and the effect on price pursuant to Subarticle 6.2 below) and confirmed in writing to Subcontractor by Contractor; or
 - (c) requested in writing by Contractor.
- 6.2 The value of all variations which may be made under Subarticle 6.1 above will be fair and reasonable in all circumstances, subject in the case of Subarticle 6.1(a) to the terms of the Main Contract. In determining what is fair and reasonable, reference will be made to any valuation made under the Main Contract in respect of the same variation.

7. CONFIDENTIALITY

All information obtained by Subcontractor in the performance of this Agreement will be kept confidential and will not be divulged by Subcontractor to any third party, or used for any

purpose other than the performance of the Services, either during the term of this Agreement or thereafter, unless such information is, or becomes, public knowledge through no fault of Subcontractor Group, is required to be disclosed in connection with any legal proceeding regarding this Agreement, or as otherwise required by law or judicial order. Subcontractor will take all reasonable precautions to ensure that its employees will preserve the confidential nature of such information and any confidentiality obligations stipulated under the Main Contract. The confidentiality obligations contained herein will apply equally to Contractor as it relates to Subcontractor's confidential information.

8. LIENS, ATTACHMENTS AND ENCUMBRANCES

Each Party will be responsible for all of its or its employees, subcontractors, vendors or suppliers claims for labor, equipment, supplies and materials to be furnished by such Party hereunder. Neither Party will permit liens, attachments, or encumbrances to be imposed by any person, firm, or governmental authority upon the other Party's or Operator's property as a result of such claims. Any such lien, attachment, or other encumbrance, caused by the actions or omissions of a Party, until such Party will have secured the release thereof, will preclude any claims or demand by such Party for any payment whatsoever under this Agreement. In the event any such lien, attachment, or other encumbrance caused by the actions or omissions of a Party is not removed within fifteen (15) days after written notice by the other Party, such other Party may remove the same and withhold the reasonable cost of removal, including reasonable fees and expenses, from any sums due to the other Party. Notwithstanding the foregoing, each Party's right to seek liens, attachments or encumbrances against the other Party's property as a result of the non-payment of undisputed amounts due to such Party hereunder by the other Party will not be limited by this Article 8.

9. LIABILITY AND INDEMNIFICATION

NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS AGREEMENT OR THE MAIN CONTRACT:

9.1 **Subcontractor will be liable for, and hereby releases and agrees to defend, indemnify and hold harmless Contractor Group and Operator Group from and against, any and all Claims (i) for personal or bodily injury to, sickness, disease or death of any member of Subcontractor Group, (ii) damage to or loss or destruction of any real or personal property owned, leased, rented or hired by any member of Subcontractor Group, (iii) arising from Subcontractor's actual or alleged failure to comply with any law, ordinance, regulation, rule or order, or with this Agreement or the Main Contract, including but not limited to any fines or penalties by government authorities and/or claims arising from Subcontractor's actual or alleged failure to pay taxes and (iv) for infringement of any patent, copyright, trademark or other intellectual property right or trade secret misappropriation arising out of Subcontractor's Services; provided however, that such indemnity obligation will not apply to Claims for infringement that arise out of specifications furnished by the Contractor.**

- 9.2 **Notwithstanding anything to the contrary contained herein, Subcontractor will assume all responsibility for, including control and removal of, and will protect, defend and indemnify Contractor Group and Operator Group from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination caused by spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge, garbage or other pollutants or contaminants in Subcontractor's possession or control or associated with Subcontractor's equipment or facilities.**
- 9.3 **With respect to claims by employees of Subcontractor or any other member of Subcontractor group, the indemnity obligations created under this Article 9 will not be limited by the fact of, amount, or type of benefits or compensation payable by or for Subcontractor, any member of Subcontractor Group or any of their suppliers under any laws or regulations relating to workers' compensation, disability benefits or other employee benefits, and Subcontractor hereby waives any limitation of liability or immunity under any such law or regulation.**
- 9.4 **Contractor will be entitled to retain payments otherwise due Subcontractor for such amounts as will reasonably be considered necessary to satisfy any Claims that fall within Subcontractor's indemnity obligations under this Agreement until such Claims have been satisfied or settled or otherwise fully resolved and cleared, and satisfactory evidence to that effect has been furnished to Contractor.**
- 9.5 **In the event that the indemnity provisions of this Agreement are contrary to applicable law, then the indemnity obligations applicable hereunder will be construed to be to the fullest extent allowed by applicable law.**
- 9.6 **THE INTENT AND EXPRESS AGREEMENT OF THE PARTIES HERETO IS THAT ALL INDEMNITY OBLIGATIONS AND LIABILITIES ASSUMED BY THE PARTY PROMISING INDEMNITY (THE "INDEMNITOR") IN FAVOR OF THE PERSON OR ENTITY TO WHOM THE INDEMNITY IS PROMISED (THE "INDEMNITEE") UNDER THE TERMS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THIS ARTICLE 9, BE WITHOUT MONETARY LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF, INCLUDING, BUT NOT LIMITED TO (A) PRE-EXISTING CONDITIONS OR DEFECTS, (B) THE NEGLIGENCE OR OTHER MISCONDUCT OF THE INDEMNITEE (WHETHER THE INDEMNITEE'S NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, ACTIVE OR PASSIVE, SIMPLE OR GROSS), (C) THE FAULT OR RESPONSIBILITY OF ANY PARTY UNDER ANY OTHER CONTRACT OR ANY STATUTE, RULE, OR THEORY OF LAW, INCLUDING, BUT NOT LIMITED TO, BREACH OF EXPRESS OR IMPLIED WARRANTY AND STRICT LIABILITY OF THE INDEMNITEE, (D) MISREPRESENTATION OR BREACH OF CONTRACT, (E) LIABILITY DUE TO BREACH OF ANY LEGAL DUTY, AND (F) AN INDEMNIFICATION AGREEMENT WITH A THIRD PARTY. THIS AGREEMENT WILL CREATE NO RIGHT OF ACTION IN ANY PERSON NOT A PARTY HEREUNDER OR NOT SPECIFICALLY IDENTIFIED AS AN INDEMNITEE HERETO. THE INDEMNIFYING PARTY ASSUMING LIABILITY TO THE INDEMNITEE UNDER THIS AGREEMENT AGREES TO INVESTIGATE, DEFEND AND/OR SETTLE ANY CLAIM OR SUIT FOR**

WHICH IT IS OBLIGATED TO PROVIDE INDEMNIFICATION HEREUNDER, TO BEAR ALL COSTS AND EXPENSES RELATED THERETO AS THEY ARE INCURRED (INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND ATTORNEY'S FEES), AND TO SATISFY ANY JUDGMENTS OR DECREES WHICH MAY BE ENTERED THEREIN.

9.7 IF OPERATIONS ARE PERFORMED IN LOUISIANA OR UNDER LOUISIANA LAW, BOTH PARTIES AGREE THAT:

- (a) SUBCONTRACTOR'S INDEMNITY OBLIGATIONS ASSUMED UNDER THIS ARTICLE 9 WILL BE COVERED BY THE INSURANCE THAT SUBCONTRACTOR IS REQUIRED TO PROCURE AND OBTAIN UNDER THIS AGREEMENT; AND SUBCONTRACTOR HEREBY REPRESENTS AND WARRANTS THAT THE COST OF OBTAINING ALL SUCH REQUIRED INSURANCE IS INCLUDED IN AND HAS BEEN RECOVERED IN THE PRICE PAID TO SUBCONTRACTOR FOR THE SERVICES PERFORMED HEREUNDER, IN ACCORDANCE WITH LOUISIANA REVISED STATUTE 9:2780.1(I).**
- (b) Contractor and Subcontractor agree that Operator and Contractor be and are hereby designated as the statutory employer of Subcontractor's direct and statutory employees, pursuant to Louisiana Revised Statute 23:(1061)(A)(3). Contractor and Subcontractor agree that the services required of the Subcontractor and its direct and statutory employees are an integral part of and essential to Contractor and Operator's ability to generate goods, products and services.**

10. CONSEQUENTIAL DAMAGES

Notwithstanding anything contained in this Agreement to the contrary, Subcontractor will be liable for, and hereby agrees to release, indemnify, defend and hold Contractor Group and Operator Group harmless from and against, any and all Claims brought by or in favor of Subcontractor Group for any special, punitive, exemplary, indirect, incidental or consequential damages or losses (whether foreseeable or not at the date of this Agreement) including, without limitation, damages or losses for lost production, lost revenue, lost product, lost profit, lost business or business interruptions, REGARDLESS OF THE CAUSE, INCLUDING WITHOUT LIMITATION, THE SOLE, JOINT AND/OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, BREACH OF DUTY (STATUTORY OR OTHERWISE), BREACH OF REPRESENTATION OR WARRANTY, BREACH OF CONTRACT, OR ANY OTHER LEGAL FAULT OR RESPONSIBILITY OF CONTRACTOR GROUP, OPERATOR GROUP, OR ANY OTHER PERSON, PARTY OR ENTITY, OTHER THAN THE WILLFUL MISCONDUCT OF CONTRACTOR GROUP.

11. INSURANCE

11.1 The indemnity and indemnity-supporting insurance obligations in Article 10 of this Agreement and the "additional insured" and other insurance obligations under this

Article 11 are distinct, separate and apart from each other and fulfillment of the obligations under one Article will not satisfy the obligations in the other Article. Without limiting the indemnity obligations or liabilities of Subcontractor Group or its insurer(s), at all times during the term of this Agreement, Subcontractor will, at Subcontractor's sole expense, maintain with an insurance company or companies satisfactory to Company and authorized to do business in all areas where any equipment, supplies or materials are delivered and services are being performed by Subcontractor Group, or through a self-insurance program, insurance coverages of the kind, and in the minimum amounts, as follows:

- (a) Worker's Compensation Insurance in accordance with all applicable state and federal laws and regulations, including occupational disease coverage.
- (b) Employer's Liability Insurance with minimum limits of \$1,000,000 per occurrence, covering injury or death to any employee which may be outside the scope of the Worker's Compensation statute of each state in which the work or job is performed or outside the scope of similar federal statutes if the work is performed outside state jurisdiction.
- (c) Comprehensive General Liability Insurance, including contractual liability insuring the indemnity agreement as set out in this Agreement and Contractor's Protective Liability Insurance covering work sublet, with minimum limits of \$1,000,000 applicable to bodily injury, sickness or death in any one occurrence, \$1,000,000 for loss or damage to property in any one occurrence, and \$2,000,000 aggregate coverage. Such insurance will also include Completed Operations and/or Products Liability coverage.
- (d) Comprehensive Automobile Liability Insurance covering owned, non-owned and hired vehicles used by Contractor with combined single limit of \$1,000,000 for bodily injury, sickness, death or damage to property in any one occurrence.
- (e) Contractor will carry a minimum limit of \$5,000,000 insurance coverage for each and every occurrence, which may be the combination of primary and excess liability or umbrella coverages.

11.2 To the extent of Subcontractor's indemnity obligations in this Agreement, Subcontractor agrees (and will cause the underwriters of all insurance required to be maintained by Subcontractor) on behalf of Contractor Group and Operator Group (collectively, the "Insured Parties") to:

- (a) waive rights of subrogation against the Insured Parties;
- (b) name the Insured Parties as additional insured; and
- (c) provide that such insurance be primary to any other similar insurance carried by any of the Insured Parties.

11.3 Prior to any member of Subcontractor Group beginning Services or being present on or at any Contractor Group or Operator Group work location related to Services, Subcontractor will furnish Contractor with Certificates of Insurance satisfactory to

Subcontractor, which will evidence that the coverages specified herein are in full force and effect and provide that such insurance policies will not be canceled, reduced, or materially changed without thirty (30) days prior written notice to Contractor. Failure of Contractor to object to Subcontractor's failure to furnish such Certificates of Insurance or to object to any defect therein will not be deemed a waiver of Subcontractor's obligation to furnish the Certificates of Insurance and the insurance coverage described herein.

- 11.4 Deductibles, if any, will be the sole responsibility of Subcontractor with respect to liabilities undertaken by Subcontractor hereunder. Subcontractor's indemnification obligations under this Agreement will not be limited in amount or in scope to coverages provided by insurance that is required by this Agreement. Agreement.

12. TAXES

Subcontractor will be responsible for, and will indemnify, and hold harmless Contractor and Operator from the reporting, filing, and payment of any taxes, duties, charges, or fees (and any related fines, penalties, or interest) imposed directly or indirectly on Contractor or Operator as a result of Subcontractor's performance of this Agreement. Subcontractor's prices will be exclusive of any federal, state, or local sales, use, or excise taxes levied upon, or measured by, the sale, the sales price, or use of Services required in the performance of this Agreement. Subcontractor will list separately on its invoice any such tax lawfully applicable to any such Services, and payable by Contractor or Operator, with respect to which Contractor or Operator does not furnish to Subcontractor lawful evidence of exemption and Subcontractor will collect, report and remit all such taxes to the appropriate governmental authorities. Subcontractor will be responsible for filing the necessary tax returns, or tax declarations, and for the payment of all taxes required, when due, with respect to any and all payments earned by Subcontractor under this Agreement.

13. PROJECT ADMINISTRATION

Contractor will appoint a representative who will be responsible for liaising with Operator regarding the Work and who will have full authority for resolving day-to-day issues which may arise between Operator and Contractor or between Contractor and Subcontractor. Likewise, Subcontractor will designate a representative to liaise with Contractor's representative who will have full authority to represent and make all day-to-day decisions on behalf of Subcontractor in respect of the Services. Subcontractor may not change its representative without giving reasonable advance, written notice to Contractor.

14. TERMINATION

- 14.1 Subject to Subarticle 14.2 below, Contractor will have the right to terminate this Agreement for any reason, at any time, on providing written notice to Subcontractor. In such event, Subcontractor will be entitled to recover from Contractor all monies due for that part of the Services delivered in accordance with this Agreement prior to such termination, plus reasonable, Contractor-approved costs actually incurred or committed by Subcontractor (such as costs which are not cancelable or recoverable or for specially engineered equipment), except that where such termination is due to termination by

Operator under the Main Contract, such entitlement will apply only to the extent that such payments are recoverable from Operator. Subcontractor will have the right to terminate this Agreement for any reason, provided that Subcontractor has given 30 days' prior written notice to Contractor, and provided further that Subcontractor will continue to provide any Services as agreed prior to such termination under the terms of this Agreement.

14.2 If Subcontractor:

- (a) fails to manufacture and deliver the Services as set forth herein with due diligence, other than as a result of Force Majeure; or
- (b) fails in any material respect to perform the Services or to perform its obligations in accordance with this Agreement and the Main Contract for a period of five (5) days after written notice of such failure is received by Subcontractor; or
- (c) fails to remove defective materials and/or make good defective Services to the extent set forth in this Agreement;
- (d) becomes insolvent, or makes an assignment on behalf of creditors, or is the debtor named in voluntary bankruptcy, receivership, or like proceedings, or is the debtor named in involuntary bankruptcy, receivership, or like proceedings and fails to cause the same to be dismissed within ninety (90) days after the filing of such proceeding; or
- (e) undergoes any change in legal or beneficial ownership or control;

then in such event and without prejudice to any other rights or remedies Contractor may have under this Agreement or at law or in equity, Contractor may by written notice to Subcontractor immediately terminate this Agreement. In such event, Contractor may withhold any amounts then due to Subcontractor for the Services completed prior to such termination until final completion of such Services by Contractor or others, and Contractor may use such sums to offset any increased costs incurred by Contractor in completing such Services or losses incurred by Contractor as a result of any of the events described above.

15. PROPRIETARY RIGHTS

- 15.1 Subcontractor represents, warrants and agrees that (a) neither the Services (including, without limitation, any software, firmware or equipment), nor the use thereof, will in any way infringe or contribute to the infringement of any patent, copyright, trademark, service mark, trade secret or other proprietary right in the United States or elsewhere, and no claim, action or suit alleging any such infringement or contribution to infringement is pending or threatened against Subcontractor, its employees, agents, suppliers or contractors; (b) Subcontractor has full power and authority to grant all of the rights granted by it in this Agreement; and (c) any and all royalties, fees and costs for such rights are set forth in **Exhibit A**, and except as otherwise expressly set forth in

Exhibit A, no royalties, fees or other costs are payable to Subcontractor or any third party for any such rights.

- 15.2 If Contractor's or Operator's use of any of the Services, or of any of the intellectual property or proprietary rights granted to Contractor under this Agreement (the "**granted rights**"), is enjoined in connection with any claim, action or suit alleging that such Services or granted rights infringe or contribute to the infringement of any patent, copyright, trademark, service mark, trade secret or other proprietary right in the United States or elsewhere, then Subcontractor will, at its sole cost and expense, either (a) procure for Contractor the perpetual right to continue using the affected Services and granted rights without restriction and without any obligation on the part of Contractor to make any royalty or other payments, (b) replace the affected Services and granted rights with non-infringing Services and rights that do not adversely affect Contractor's right to use the Services or granted rights as contemplated by Contractor on the date of this Agreement (including, without limitation, any adverse effect relating to the functionality of the Services or granted rights or the cost of using or maintaining the Services or granted rights), or (c) modify the affected Services and granted rights in a manner that does not adversely affect Contractor's right to use the Services or granted rights as contemplated on the date of this Agreement (including, without limitation, any adverse effect relating to the functionality of the Services or granted rights or the cost of using or maintaining the Services or granted rights) so that the affected Services and granted rights become non-infringing. Subcontractor's obligations under this Article 15 are in addition to, and will not limit, restrict or otherwise affect in any way, the other obligations of Subcontractor under this Agreement, applicable law or otherwise.
- 15.3 Subcontractor hereby grants to Contractor and its Affiliates an irrevocable, perpetual, worldwide, non-exclusive, royalty-free license (i) to use, and to authorize third parties to use, all inventions, discoveries, improvements, processes, designs, ideas, software and other intellectual property that Subcontractor conceives or first reduces to practice in the performance of this Agreement and (ii) to reproduce, translate, publish, use and dispose of, and to authorize others to do so, any copyrighted or copyrightable materials delivered to Contractor by Subcontractor in connection with the performance of this Agreement. Subcontractor acknowledges that nothing in this Agreement grants or otherwise provides Subcontractor or any of its Affiliates with any rights relating to any patent, copyright, trademark, service mark, trade secret or other proprietary right of Contractor or any of its Affiliates.

16. AUDIT

Contractor reserves the right to access and inspect, or have its customers or regulatory authorities access and inspect, all areas of Subcontractor's facilities or facilities of its sub-suppliers where the components of the Services are manufactured or held, and any policies, procedures, books and records relating to the manufacture of such components. Nothing in this Agreement will in any way relieve Subcontractor from its testing, inspection and quality control obligations. During the term of this Agreement and for a period of five years thereafter, Subcontractor will maintain accurate books and records relating to the Services and Subcontractor's obligations under this Agreement and will permit Contractor to access, audit and inspect such books and records at any time upon notice to Subcontractor.

17. LEASED GOODS

In the event that Contractor is leasing Leased Items (as defined below) from Subcontractor, the following additional terms and conditions contained in this Section will apply: During the lease term (as set forth in the Order), Contractor will have the exclusive right to possess and use the Leased Items. Contractor will be permitted to use the Leased Items for any use permitted by law. Subcontractor will maintain legal title to the Leased Items. Subcontractor will, at its sole cost and expense, maintain the Leased Items in good repair, condition and working order, and will furnish and install at its sole cost and expense any and all parts, mechanisms, and devices required to keep the Leased Items in good mechanical and working order. Subcontractor will pay all license fees, registration fees, and taxes (local, state, and federal), which may now or hereafter be imposed upon the ownership, leasing, renting, sale, possession, or use of the Leased Items. Contractor may assign or sublease Contractor's interest in the Leased Items without Subcontractor's consent. Subcontractor hereby assumes and agrees to bear the entire risk of loss and damage to the Leased Items from any cause other than Contractor's negligence or misconduct. In the event of loss or damage of any kind to the Leased Items due to Contractor's negligence or misconduct, Contractor will, as Subcontractor's sole and exclusive remedy for such loss or damage, (a) restore the Leased Items to good repair, condition and working order, or (b) pay Subcontractor in cash as liquidated damages the balance of the lease payments reasonably allocable to such damaged or destroyed Leased Items, whichever remedy Contractor, in its sole discretion, elects to provide. Within 30 days after the termination of the lease term, Contractor will return the Leased Items to Subcontractor at the destination Subcontractor will direct, at Subcontractor's sole risk and expense. "Leased Items" means, collectively, those items of equipment, related parts, materials, supplies, and other personal property to be used in connection with any Services performed hereunder.

18. PROHIBITED PAYMENTS

- 18.1 Each Party is familiar with, and hereby agrees to comply with the provisions of the United States Foreign Corrupt Practices Act of 1977, as amended ("FCPA") and any similar applicable U.S. or non-U.S. law. Further and additionally, each Party acknowledges that Contractor's corporate policies prohibit "Facilitation" payments to any Non-US government official, political party or party official (as defined in the FCPA). In performance of this Agreement, each Party will ensure that no "Facilitating" payments will be made by said Party or its personnel in violation of Contractor's corporate policies.
- 18.2 Contractor may from time to time in writing request that Subcontractor provide written certification, signed by an officer or principal of Subcontractor, of Subcontractor's compliance with the FCPA, similar applicable laws and/or Contractor's Facilitating payments policy. Subcontractor will provide such certification within ten (10) business days following receipt of Contractor's written request for such certification.
- 18.3 Contractor will have the right from time to time to audit Subcontractor's books and records, applicable only to those books and records related to this Agreement, during normal business hours and at Contractor's cost, to evaluate Subcontractor's compliance with the FCPA, similar applicable law, Contractor's Facilitating payments policy and this Agreement. Subcontractor will cooperate and provide full and immediate access to Contractor and its designated representatives to Subcontractor's books and records to facilitate such audit.

- 18.4 Should Contractor in good faith have proof, that Subcontractor may be engaging in or is about to engage in a violation of the FCPA, any similar applicable law or Contractor's Facilitating payments policy, Contractor may, upon written notice, withhold further payments due to Subcontractor for Services under this Agreement until such time as Contractor has in good faith determined that no such violation has or will occur.
- 18.5 Notwithstanding anything in this Agreement to the contrary, including Article 14 (Termination), should either Party violate the FCPA, similar applicable law, or Contractor's Facilitating payment policy while performing its obligations under this Agreement, the other Party will have the absolute right and option to:
- (a) immediately terminate this Agreement upon written notice,
 - (b) cancel future payments due to the other Party, and
 - (c) seek reimbursement of any and all amounts the non-violating Party has previously paid to the other Party or incurred in preparation of delivering Services performed under this Agreement, to the extent that the other Party's violation(s) related to such Services.

19. ASSIGNMENT AND SUBCONTRACTING

- 19.1 If under the Main Contract, Contractor is required to assign the benefits and/or obligations of any subcontract entered into by Contractor in connection with the Main Contract (including this Agreement) in certain stated circumstances, Subcontractor will agree to and will cooperate fully with Contractor and Operator in the execution of such assignment.
- 19.2 Subcontractor will not assign the whole or any part of this Agreement without the prior written consent of Contractor and, where required by the Main Contract, of Operator.
- 19.3 Notwithstanding any other provision in this Agreement to the contrary, this Agreement and all its rights and obligations may be freely assigned or otherwise transferred by Contractor without consent of the Subcontractor: 1) to an entity that acquires the Contractor or all or some of Contractor's business, or an entity that results from the merger or consolidation of the Contractor with another entity; or 2) to a related company or entity as part of a corporate reorganization where the beneficial ownership of the Contractor remains substantially the same.
- 19.4 Upon prior written notice and with the consent of Contractor, Subcontractor may have any portion of the Services performed by sub-subcontractors. If sub-subcontracting is permitted by Contractor, Subcontractor will continue to be responsible for the completion of this Agreement. Failure of Subcontractor to obtain Contractor's prior consent constitutes a material breach of this Agreement and Contractor may immediately terminate this Agreement as a result thereof.
- 19.5 All payments received by Subcontractor will be held in trust by Subcontractor and will be used solely for payment of all labor, materials, equipment, services, Subcontractor's sub-subcontractors/material suppliers and all other obligations incurred by the Subcontractor in connection with the performance of the Services, and will not be used

for any other purpose by the Subcontractor until all obligations of Subcontractor in connection with the Services are satisfied in full.

- 19.6 If there has been a termination of the Main Contract, Subcontractor will be paid the amount due to Subcontractor for the provision of Services hereunder, but only after payment therefor has been made by Operator to Contractor.
- 19.7 Subcontractor, and its lower tier sub-subcontractors and suppliers, will not use any labor, materials, or work methods which may, or will, cause strikes, secondary boycotts, work stoppages or slowdowns, or labor disturbances of any kind or nature to the project Subcontractor, and its lower tier sub-subcontractors and suppliers, further agree to comply with all labor and laws and work regulations applicable to its work and to refrain from engaging in any conduct, or in employing any labor, which may, or will, result in Contractor being in violation of a provision or provisions of a labor agreement to which it is a party. Upon receipt of notice from Contractor that it, or its lower tier sub-subcontractors and/or suppliers, are in violation of any of the above specified prohibitions and requirements, Subcontractor will immediately cease such violations and, if they are the violations of its lower tier sub-subcontractors and/or suppliers, it will immediately cause its lower tier sub-subcontractors and suppliers to cease such violations. Subcontractor agrees to defend, indemnify and to hold Contractor harmless from and against any and all claims, liabilities, losses, and expenses (including but not limited to attorney's fees) and court costs, of every kind and description which are asserted against Contractor, or which it may incur or sustain, by reasons of any such violations.
- 19.8 Subcontractor covenants and agrees that any and all labor employed by its sub-subcontractors and it, in the performance of the Services hereunder, will be paid fully for strictly in accordance with all applicable federal and state laws and in accordance with applicable union agreements and that it will, upon demand of Contractor, furnish evidence satisfactory to Contractor that its sub-subcontractors and it are so doing. In the event that Contractor will become liable for any costs resulting from Subcontractor, or its sub-subcontractors' failure to comply with this provision, Subcontractor will immediately, upon demand, reimburse Contractor for said costs. Toward that end, Subcontractor will permit Contractor to examine its books and records and will cause its sub-subcontractors to permit Contractor to examine their books and records. Such examinations will be permitted, without notice, at the offices of Subcontractor or its sub-subcontractors, during their ordinary business hours.

20. CLEAN UP

Subcontractor will perform regular cleanup and prompt removal of any and all debris or rubbish resulting from Services performed under this Agreement notwithstanding any reference in the Main Contract requiring Contractor to perform said cleanup or rubbish removal. In the event Subcontractor fails to perform regular cleanup and prompt removal in connection with Services it or its sub-subcontractors perform hereunder, Contractor will perform said cleanup on Subcontractor's behalf and charge Subcontractor for the cost thereof.

21. SAFETY

Subcontractor will, at its own expense, conform to the basic safety policy of the Contractor and comply with all specific safety requirements promulgated by any governmental authority including without limitation the requirements of the Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969 and all amendments thereto and all standards and regulations which have been or will be promulgated by the parties or agencies which administer such Acts. Subcontractor also will require full compliance with such requirements by its sub-subcontractors, employees, and materialmen, and will respond to, defend and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its failure, or failure on the part of its sub-contractors, employees, and materialmen, to so comply.

22. NOTICES

All notices and other communications required or permitted under this Agreement must be in writing and will be deemed to have been duly given (a) when delivered in person, (b) when dispatched by electronic facsimile transfer (with a confirmation report that the transmission was successful) or electronic mail, (c) one (1) business day after having been dispatched by a nationally recognized overnight courier service or (d) five (5) business days after being sent by registered or certified mail, return receipt requested, postage prepaid, to the appropriate party at the address or facsimile number specified below:

If to Contractor:

Attn: _____
Phone: _____
Email: _____

If to Subcontractor:

Attn: _____
Phone: _____
Email: _____

23. GOVERNING LAW AND EXCLUSIVE VENUE

The validity, construction, interpretation, and effect of this Agreement will be governed by the substantive laws of the Commonwealth of Massachusetts, excluding conflicts laws and choice of law principles. Each Party consents to personal jurisdiction in any action brought in the state or federal courts located in Boston, Massachusetts with respect to any dispute, claim or controversy arising out of or relating to or in any way connected to this Agreement, and each of the Parties agrees that any action instituted by it against the other with respect to any such dispute, controversy or claim will be instituted exclusively in such courts.

24. GENERAL

- 24.1 Subcontractor acknowledges that the time periods for performance specified in **Exhibit A** are critical to Contractor and that *time is of the essence* in Subcontractor's performance of this Agreement for the avoidance of substantial loss to Contractor. Subcontractor's failure to meet any delivery date or delivery schedule for any reason other than Force Majeure or Contractor delay without Contractor's prior written consent, will constitute a material breach of this Agreement.
- 24.2 No benefit or right accruing to a Party under this Agreement (or any amendment or addendum thereto) will be deemed to be waived unless the waiver is in writing, expressly refers to this Agreement, and is signed by a duly authorized representative of each Party. A waiver in any one or more instances will not constitute a continuing waiver unless specifically so stated in the written waiver.
- 24.3 If any provision (or portion thereof) of this Agreement will be declared invalid, illegal or unenforceable, the remaining provisions will not be affected thereby, and this Agreement will be construed as if such invalid, illegal or unenforceable provision (or portion thereof) had never been part of this Agreement.
- 24.4 This Agreement contains the entire agreement between the Parties and supersedes and replaces any oral or written communications heretofore made between the Parties relating to the Services. This Agreement will not be amended except by a written instrument executed by the duly authorized representatives of both Parties.
- 24.5 This Agreement may be executed in multiple counterparts, all of which taken together will constitute one and the same instrument and any of the Parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of this Agreement by fax or electronic mail will be equally as effective as delivery of an original executed counterpart of this Agreement. Any Party delivering an executed counterpart of this Agreement by fax or electronic mail also will deliver an original executed counterpart of this Agreement to the other Party in due course, but the failure to deliver an original executed counterpart will not affect the validity, enforceability, and binding effect of this Agreement.
- 24.6 Except as otherwise provided herein and subject to the restrictions on assignment set forth in this Agreement, all provisions of this Agreement will be binding upon and inure to the benefit of, and be enforceable by and against the Parties hereto, and each of their respective to agents, executors, administrators, personal representatives, and assigns.
- 24.7 Each Party hereto agrees to execute and deliver all such other documents, instruments and agreements and to take all such other actions as the other Party hereto may reasonably request from time to time and without payment of further consideration in order to effectuate or evidence the transactions contemplated hereby.
- 24.8 The headings and captions contained in this Agreement are for convenience of reference only and will have no bearing on the interpretation or enforcement of this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

CONTRACTOR:

Hennigan Engineering, LLC

By: _____

Name: _____

Title: _____

SUBCONTRACTOR:

By: _____

Name: _____

Title: _____

EXHIBIT A

SUBCONTRACTOR RESPONSIBILITIES & PRICING