



# SUBCONTRACT AGREEMENT

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## Subcontract

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### FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

**SUBCONTRACT NO.:**

**PROJECT DESC:**

**SUBCONTRACTOR:**

**ADDRESS:**

**MAILING ADDRESS:**

**CONTACT PERSON:**

**TELEPHONE NO.:**

**EMAIL:**

**FAX NO.:**

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**THIS SUBCONTRACT AGREEMENT** (Subcontract) made as of the XX day of XXX 2019 between GEM Technologies, having a place of business at 2033 Castaic Ln, Knoxville, TN 37932 (CONTRACTOR), and XXXX having a place of business at XXXXXX (SUBCONTRACTOR). For the considerations hereinafter stated and in exchange for the mutual covenants herein made, SUBCONTRACTOR covenants and agrees with CONTRACTOR, as follows:

## 1.0 SUBCONTRACT AMOUNT

CONTRACTOR agrees to pay SUBCONTRACTOR for the full performance of the SUBCONTRACT work in strict compliance with SUBCONTRACT the sum of **\$ .00 (IN WORDS)** as provided by and subject to the Terms and Conditions of this SUBCONTRACT.

## 2.0 SUBCONTRACT DOCUMENTS

SUBCONTRACTOR shall be bound to CONTRACTOR by all Terms and Conditions of this Subcontract and by all Terms and Conditions of XXXXX (Contract), between, XXX (COMPANY) and CONTRACTOR entered into on XXXXXX which is incorporated by reference into this Subcontract and is an integral part of this Subcontract. Contract is the entirety of all agreements and requirements by which CONTRACTOR and COMPANY are bound to each other for this Project. The Contract includes, but is not limited to, the agreement between CONTRACTOR and COMPANY, all general, supplementary, special, and technical provisions, Terms, and Conditions, drawings, specifications, details, and standards, applicable regulations, codes, and governmental requirements, all addenda, modifications, changes, and revisions to any of the foregoing, and all other documents or requirements incorporated or referenced by the foregoing. ***In addition, Contract is inclusive of the entire Scope of Work, technical requirements, QA Program requirements, right of access, documentation requirements, non-conformances, spare/replacement parts, suspect and counterfeit items prevention, and commercial grade items criteria (if applicable).*** SUBCONTRACTOR shall assume toward CONTRACTOR all the obligations and responsibilities which CONTRACTOR, by the Contract, assumes toward COMPANY except for any obligations and responsibilities that may be specifically modified or excluded by the terms of this Subcontract. In no event, shall SUBCONTRACTOR be entitled to greater rights, higher entitlements, or more relief against CONTRACTOR than CONTRACTOR actually obtains from COMPANY.

- 2.1 Order of Precedence – In cases of express conflict between parts of Subcontract, specifications, drawings, or exhibits, the following descending order of precedence shall apply:
- a. Subcontract Change Notices and Modifications
  - b. Exhibit A – “Scope of Work”
  - c. Subcontract
  - d. Contract Terms and Conditions

- 2.2 SUBCONTRACTOR hereby warrants that it has reviewed and fully understands all Terms and Conditions of Contract between COMPANY and CONTRACTOR and agrees to be bound by same.

## 3.0 GENERAL SCOPE OF SUBCONTRACT WORK

- 3.1 SUBCONTRACTOR shall furnish all labor, materials, tools, equipment, facilities, supervision, management, financing, shop drawings, submittals, testing, transportation, cleanup, scheduling information, documents, quality control, insurance and bonding, and whatever is necessary to fully perform in a workmanlike manner and in every respect, complete the work required by this Subcontract as described in EXHIBIT A Scope of Work.

3.2 Subcontract work is based upon the Scope of Work described in Contract Number XXXXX and becomes an integral part of Subcontract.

## 4.0 TIMING AND SCHEDULING OF PERFORMANCE

In the performance of SUBCONTRACTOR's obligations hereunder, time is of the essence.

4.1 SUBCONTRACTOR agrees to commence work when directed by CONTRACTOR, upon the issuance of a Notice to Proceed and required schedule. SUBCONTRACTOR shall diligently prosecute the Subcontract work and cooperate with CONTRACTOR in coordinating the work with other work being done on the Project to avoid conflict or interference with the work of others. If CONTRACTOR is delayed by any act or omission of SUBCONTRACTOR in completion of the Project such that CONTRACTOR's performance extends beyond the time specified in the Contract Documents, then SUBCONTRACTOR shall pay CONTRACTOR for all costs and damages suffered by CONTRACTOR as a result of such delays, including but not limited to any damages assessed against CONTRACTOR under the Contract.

4.2 CONTRACTOR reserves the right to determine the sequence of operations, performance schedules, and allocation of storage and working space to be followed and used by SUBCONTRACTOR in completing the work.

4.3 If SUBCONTRACTOR is delayed, hindered or disrupted at any time in the performance of Subcontract work by SUBCONTRACTOR, CONTRACTOR, or other subcontractors, SUBCONTRACTOR, as its sole and exclusive remedy, may upon written request made to CONTRACTOR, obtain time extensions and an increase in the Subcontract price to the extent of any amounts and time extensions that CONTRACTOR, on behalf of the SUBCONTRACTOR, actually receives from COMPANY or from the responsible subcontractors for such delays or disruptions. As a condition precedent to any relief, SUBCONTRACTOR must give CONTRACTOR written notice as required by Paragraph 4.4.

4.4 Any claim for extension of time or increase in the Subcontract price as a result of delays which SUBCONTRACTOR contends to have been caused by CONTRACTOR or other subcontractors, shall be made in writing to CONTRACTOR for submission to COMPANY or COMPANY's authorized representative not more than five (5) working days after the start of the delay; otherwise the claim shall be waived. In the case of a continuing delay, only one claim is necessary. SUBCONTRACTOR shall submit with its claim an estimate of the probable effect of such delay on the progress of the work as well as financial impacts, if any.

## 5.0 PERFORMANCE FAILURES AND TERMINATION

5.1 If SUBCONTRACTOR falls behind CONTRACTOR's schedule for the Subcontract work or if, in the opinion of CONTRACTOR, SUBCONTRACTOR is otherwise not maintaining a satisfactory rate of progress so as to complete the Project in the most expeditious and economical manner, and according to the Project Schedule, CONTRACTOR may direct SUBCONTRACTOR to take such action as CONTRACTOR in good faith deems necessary or appropriate to improve SUBCONTRACTOR's rate of progress including, but not limited to, increasing the number of superintendents, foreman, skilled labor, and unskilled labor, increasing the number of crews, increasing the number of shifts, employing more or better equipment, working overtime, expediting delivery of materials, substituting materials, changing sequence of performance, prosecuting parts of the Subcontract work in preference to other parts and any other increase or acceleration of effort, which shall be performed by SUBCONTRACTOR at no cost to CONTRACTOR.

5.2 In addition to the rights set forth in Paragraph 5.1, CONTRACTOR shall have the right, without notice to SUBCONTRACTOR, to provide any additional labor, materials, equipment, supervision, or other item and to take such additional action as CONTRACTOR in good faith, for any reason, deems necessary or appropriate, which shall be at SUBCONTRACTOR's cost

and which CONTRACTOR shall be entitled to deduct from any payment, whether then due or thereafter to become due to SUBCONTRACTOR under the Subcontract or any other contract or subcontract between the parties. CONTRACTOR's decisions and directives under this paragraph shall be final and binding.

- 5.3 SUBCONTRACTOR agrees that if SUBCONTRACTOR refuses or fails to prosecute or complete the Subcontract work, or any part thereof, in accordance with CONTRACTOR's schedule or with other requirements of the Subcontract, or if SUBCONTRACTOR for any reason refuses or fails to perform any term or condition of this Subcontract, or if SUBCONTRACTOR fails generally to pay its bills or discharge its obligations as they become due, or if SUBCONTRACTOR fails to operate in the ordinary course of business, then CONTRACTOR may, upon forty-eight (48) hours written notice to SUBCONTRACTOR, and without prejudice to any other right or remedy, terminate all or part of this Subcontract, assume control of the Subcontract work, take possession of all materials and property necessary to continue performance of the Subcontract work (including but not limited to materials, tools, equipment, scaffolding, and supplies either which are located on the Project site or which are in storage off site or which are in transit to the site or which have been or are in the process of being specifically manufactured for the Subcontract work), re-let the remaining Subcontract work to others or perform all or any part of the Subcontract work with CONTRACTOR's own forces, and use all funds otherwise owing to SUBCONTRACTOR or left in the Subcontract toward prosecution and completion of the Subcontract work and any money due or to become due to SUBCONTRACTOR under any other contract or subcontract between the parties. SUBCONTRACTOR hereby grants CONTRACTOR lien and security interest in all of SUBCONTRACTOR's materials, supplies, equipment, and contract rights to secure the performance and completion of the Subcontract work.
- 5.4 In the event of termination of this Subcontract, in whole or in part, CONTRACTOR shall be entitled to exercise its discretion as to the means and methods of completion of the Subcontract work as CONTRACTOR in good faith deems to be appropriate and in the interests of the Project, as a whole.
- 5.5 Upon termination of this Subcontract, in whole or in part by CONTRACTOR, SUBCONTRACTOR shall not be entitled to receive any further payments until the Subcontract work has been fully completed and finally accepted by COMPANY, and not until final payment for same has been received by CONTRACTOR. SUBCONTRACTOR shall be liable for the cost of completing the Subcontract work, including all damages, losses, expenses, and costs, including attorneys' fees, incurred by CONTRACTOR as a result of any termination of this Subcontract. If CONTRACTOR's damages, costs, and liability, including attorneys' fees, exceeds the unpaid Subcontract balance. In no event, shall SUBCONTRACTOR be entitled to be paid, or recover from CONTRACTOR, more than the amount due under this Subcontract for the work completed at the date of termination of the Subcontract. SUBCONTRACTOR shall not be entitled to any special, consequential, or exemplary damages, anticipated profit, or other recovery pertaining to Subcontract work not actually performed by SUBCONTRACTOR.
- 5.6 If, after termination of the Subcontract in whole or in part by CONTRACTOR, it is determined for any reason that "SUBCONTRACTOR" was not in default under this Subcontract, SUBCONTRACTOR shall be entitled only to the amount due under the Subcontract for Subcontract work actually completed as of the date of the termination, less any cost and expenses reasonably incurred by CONTRACTOR. SUBCONTRACTOR shall in no event be entitled to special, consequential, or exemplary damages or to anticipated profit resulting from the termination of this Subcontract.
- 5.7 Notwithstanding anything to the contrary in this Subcontract, and in addition to CONTRACTOR's rights to terminate this Subcontract for breach or default, CONTRACTOR may terminate this Subcontract when CONTRACTOR determines, in CONTRACTOR's sole discretion and regardless of fault, that such termination is in the best interest of

CONTRACTOR, or if CONTRACTOR is terminated by COMPANY under a similar “no-fault” Clause. Upon such “no-fault termination”, SUBCONTRACTOR shall be entitled only to the amount due under the Subcontract for Subcontract work satisfactorily completed as of the date of “no-fault termination”, less any back charges or amounts otherwise due CONTRACTOR under the terms of this Subcontract.

## 6.0 CHANGES

- 6.1 CONTRACTOR may issue written change orders to this Subcontract, without written notice to the SUBCONTRACTOR’s sureties. SUBCONTRACTOR shall be obligated to perform such written change orders, and the Subcontract price shall be adjusted as specified by each change order.
- 6.2 All changes must be in writing. Oral changes to work under this Subcontract are not valid and will not be recognized. SUBCONTRACTOR shall have no claim or entitlement to payment for any addition to or change in Subcontract work unless, prior to performance, SUBCONTRACTOR receives a written change order for such change or addition from a Designated Corporate Officer or other representative, of CONTRACTOR, designated in writing.
- 6.3 SUBCONTRACTOR agrees to be bound by all terms of the Contract documents relating to changes, changed conditions and extra work. SUBCONTRACTOR shall notify CONTRACTOR in writing of any change, changed condition or extra work within THREE (3) working days of discovery by SUBCONTRACTOR. Specific schedule and/or financial impacts must be finalized and formally submitted to CONTRACTOR no later than an additional SEVEN (7) working days after discovery by SUBCONTRACTOR.
- 6.4 SUBCONTRACTOR’s failure to make a timely claim for additional cost or extension of time shall bind SUBCONTRACTOR to the same consequences as those to which CONTRACTOR is bound. If COMPANY, COMPANY’s authorized representative, or CONTRACTOR dispute the validity of a change order request submitted by SUBCONTRACTOR, and instruct SUBCONTRACTOR to proceed with the work pending resolution of the dispute, SUBCONTRACTOR shall promptly commence such disputed work and expeditiously complete it. SUBCONTRACTOR’s failure to promptly commence such disputed work shall be deemed to be a material breach of the Subcontract.

## 7.0 DISPUTES

- 7.1 Unless otherwise prohibited by this Subcontract or barred by SUBCONTRACTOR’s failure to adhere to terms and conditions of this Subcontract, all claims, disputes, and other matters in controversy or question between CONTRACTOR and SUBCONTRACTOR arising out of or relating to this Subcontract which cannot be resolved through negotiation between SUBCONTRACTOR and CONTRACTOR, shall be decided by mediation in accordance with the “Construction Industry Mediation Rules of the American Arbitration Association”, “National Mediation Board”; arbitration in accordance with the “Construction Industry Arbitration Rules of the American Arbitration Association”, except where SUBCONTRACTOR has a claim or dispute involving the same matter, either whole or in part, with COMPANY. In such event, if so elected by CONTRACTOR, SUBCONTRACTOR shall prosecute its claim or resolve its dispute by timely submission of same through CONTRACTOR to COMPANY, and SUBCONTRACTOR’s recovery and other relief shall be limited to the amounts actually recovered or other relief actually obtained by CONTRACTOR from COMPANY on behalf of the SUBCONTRACTOR’s claim or dispute.
- 7.2 The locale of any mediation or arbitration between CONTRACTOR and SUBCONTRACTOR shall be Knox County, Tennessee, unless CONTRACTOR agrees to designate another locale to facilitate joinder of parties, consolidation of claims, or other interests of CONTRACTOR.

- 7.3 Should CONTRACTOR through mediation, arbitration, or other means seek enforcement of any of the provisions hereof or seek to protect its interests in any matter arising under this Subcontract, or seek to collect damages for the breach of this Subcontract, or seek to prosecute or defend any suit resulting from this Subcontract, or seek to recover on the performance and payment bond given by SUBCONTRACTOR under this Contract, SUBCONTRACTOR and its surety, jointly and severally, agree to pay CONTRACTOR all costs, expenses, and attorney's fees incurred in the investigation, preparation, and trial or hearing of such matters and otherwise reasonably related thereto.
- 7.4 No claim, dispute, or other matter in controversy or question shall interfere with the progress of construction, and SUBCONTRACTOR shall proceed diligently with performance of this Subcontract, notwithstanding the existence of any claim, dispute, or other matter in controversy or question.

## 8.0 WARRANTIES

SUBCONTRACTOR, in addition to all other guarantees and warranties and without limiting CONTRACTOR's other legal rights, warrants and guarantees all material and workmanship furnished by him to be of good quality, free of faults and defects and in full compliance with the provisions of this Subcontract and agrees to perform any maintenance or corrective work, without cost, as directed by CONTRACTOR, for a period of one (1) year from the date of acceptance by CONTRACTOR of the work performed by SUBCONTRACTOR, unless the specifications provide for a longer period. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. SUBCONTRACTOR shall turn the work over to CONTRACTOR in good condition, free of any liens, claims or encumbrances, including claims or suits for patent infringements or violation of patent rights and shall protect and save harmless CONTRACTOR and COMPANY from any such claims arising from the performance of his work.

## 9.0 COMPLIANCE WITH LAWS AND LEGAL STANDARDS

- 9.1 SUBCONTRACTOR shall conduct work in strict compliance with all applicable local, state and federal laws, regulations, ordinances and building codes, and shall secure and pay for all permits, governmental fees and licenses applicable to his work. SUBCONTRACTOR shall comply with Federal, state and local tax laws, the Occupational Safety and Health Act, the Labor Management Relations Act, Social Security Acts, Unemployment Compensation Acts, and Worker's or Workmen's Compensation Acts insofar as applicable to the performance of this Subcontract. SUBCONTRACTOR shall comply with all applicable state licensing laws. SUBCONTRACTOR agrees to save CONTRACTOR harmless of, from and against any and all loss, costs, damages, charges and expenses caused or contributed to as a result of SUBCONTRACTOR's failure to comply with this paragraph.
- 9.2 FAR, DEAR and other Federal or governmental clauses and requirements, are identified within COMPANY Contract at XXXXX. Clauses may be referenced, or made inclusive in full text. This Subcontract is subject to all clauses identified, both referenced or included in full text. These articles and clauses apply as if they were set forth in their entirety.
- 9.3 SUBCONTRACTOR warrants that all goods provided, and all services performed hereunder will be in compliance with all requirements of the Fair Labor Standards Act of 1938 as amended, and SUBCONTRACTOR shall so state on each invoice covering the same. In respect of all performance due hereunder, SUBCONTRACTOR warrants that it is and will be in compliance with all applicable provisions of Federal, state, and local laws and the rules, regulations, and standards promulgated there under, including without limitation, the following as amended from time to time (a) Occupational Safety and Health Act of 1970 (b) Executive Order 11246, including the equal opportunity clause set forth therein (incorporated herein by reference) (c) Rehabilitation Act of 1973 (incorporated herein by reference) and Vietnam Era Veterans

readjustment Assistant Act of 1974 (incorporated herein by reference), including the affirmative action clauses set forth therein.

## 10.0 INSURANCE

- 10.1 **SUBCONTRACTOR shall purchase and maintain during the entire project and during the warranty period, insurance with the minimum limits and coverage shown in 10.6 below or, if greater, the requirements set forth in the Contract Documents at (LOCATION or attachment), from insurance companies acceptable to CONTRACTOR.**
- 10.2 If CONTRACTOR or COMPANY carries Builders' Risk or other insurance which may apply to the Subcontract work or which otherwise may inure to the benefit of SUBCONTRACTOR, SUBCONTRACTOR shall be responsible for all deductibles and for any inadequacy, absence, or lack of coverage, and SUBCONTRACTOR shall have no claim or other recourse against CONTRACTOR or against COMPANY for any costs, losses, or damage within such deductibles or for any reason not covered by insurance. SUBCONTRACTOR is hereby made responsible for determining and securing at SUBCONTRACTOR's cost, the types and extent of such additional insurance as may be necessary to give adequate and complete protection to SUBCONTRACTOR, CONTRACTOR, and COMPANY" from claims for property damage, loss, or disappearance and from claims from personal injury, including death, which may arise from or which may be connected with the Subcontract, whether or not such claims relate to acts or omissions of SUBCONTRACTOR or any of its Subcontractors, or of anyone directly or indirectly employed by any of them.
- 10.3 Before commencing the Subcontract work, SUBCONTRACTOR will submit to CONTRACTOR, "Certificates of Insurance" (COI), with the number of copies and content as required by CONTRACTOR, certifying the types and amounts of coverage, certifying that said insurance was in force before SUBCONTRACTOR started work, and certifying that said insurance applies to all activities and liability of SUBCONTRACTOR pursuant to this Subcontract.
- 10.4 No policy of insurance may be cancelled or reduced during the period of construction and warranty, and SUBCONTRACTOR shall obtain an endorsement to its policies and insurance certificates providing substantially as follows: Insurer may not cancel this policy or reduce coverage for a period of thirty (30) days after CONTRACTOR has acknowledged receipt of written notice of the insurer's intention to cancel or reduce the coverage.
- 10.5 The insurance and indemnity obligations of this Subcontract are non-delegable. SUBCONTRACTOR shall not sublet nor subcontract any part of this Subcontract, and without retaining absolute responsibility for requiring similar insurance from its subcontractors and suppliers. The SUBCONTRACTOR's failure to maintain complete insurance shall be a material breach authorizing CONTRACTOR, at CONTRACTOR's sole election, either to terminate this Subcontract or to provide full insurance coverage at SUBCONTRACTOR's sole expense; however, in neither case shall the SUBCONTRACTOR's liability be lessened.
- 10.6 **GENERAL LIABILITY** - SUBCONTRACTOR shall carry standard ISO General Liability coverage, written on an occurrence basis including Completed Operations. The coverage must be endorsed to name **CONTRACTOR (including COMPANY and others as required in upstream contract documents)** as an "additional insured" providing "Your Work" coverage (i.e. ongoing operations and Completed Operations) "arising out of" work performed for CONTRACTOR by SUBCONTRACTOR. Such coverage shall be provided pursuant to endorsement CG2010 11/85 or an endorsement(s) providing equivalent "arising out of" coverage. The "Additional Insured" form shall also state that this insurance shall be primary without right of contribution from any other insurance available to the "additional insureds".
- 10.7 SUBCONTRACTOR shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain completed operations coverage for itself and each additional insured for minimum period allowable under the statute of repose for the state in which the work was performed. Copy of the additional insured endorsement(s) form must be



attached to the Certificate of Insurance. A waiver of subrogation will be provided. All insurance policies must be underwritten by admitted insurers with an A. M. Best rating of A-, VII or better.

- 10.8 The CGL must be written on an occurrence basis, with minimum limits of:
- o Each Occurrence \$1,000,000
  - o General Aggregate - **Per Project** \$2,000,000
  - o Products and Completed Operations Aggregate \$2,000,000
  - o Personal/Advertising Injury \$1,000,000
  - o Fire Damage \$100,000
  - o Medical Payments \$10,000

**COMPREHENSIVE AUTOMOBILE LIABILITY** on occurrence basis covering all Owned, Non-Owned and Hired Vehicles for limits of liability equal to \$1,000,000 Combined Single Limit.

**WORKER'S COMPENSATION** including Occupations Disease insurance meeting the statutory requirements of the State in which work is to be performed together with a Broad Form All States Endorsement and containing **Employer's Liability** insurance in an amount of at least \$500,000 Each Accident / \$500,000 Disease – Policy Limit / \$500,000 Disease – Each Employee. Workers Compensation shall waive the rights of subrogation in favor of all additional insureds.

**UMBRELLA LIABILITY and/or EXCESS LIABILITY** with coverage at least as broad as the underlying policies. The per occurrence and aggregate limits shall be \$1,000,000. The per occurrence and aggregate limit shall be \$3,000,000 for subcontractors performing high hazard operations.

### 11.0 PERFORMANCE AND PAYMENT BOND

- 11.1 *If required* of CONTRACTOR prior to or during performance of this Subcontract, SUBCONTRACTOR shall furnish to CONTRACTOR, as obligee, a "Performance Bond and Payment Bond" with a responsible surety, which is and remains acceptable to CONTRACTOR, each in the full amount of this Subcontract ensuring SUBCONTRACTOR's faithful performance of this subcontract and SUBCONTRACTOR's prompt payment for all labor, material, equipment, machinery, supplies, services and other items furnished and supplier to CONTRACTOR. SUBCONTRACTOR's failure to deliver satisfactory bonds as requested shall be considered a material breach of this Subcontract.
- 11.2 The protection and coverage of SUBCONTRACTOR bonds shall extend at least to the entities protected and the type of claims covered by CONTRACTOR's bonds with respect to the Subcontract work so that no claim can be made against CONTRACTOR's bond which is also not valid and recoverable against COMPANY's bond.
- 11.3 Any obligation of SUBCONTRACTOR under this Subcontract or under the Subcontract documents incorporated by reference herein shall be equally the obligation of the surety for SUBCONTRACTOR's performance bond as if all terms and conditions of this Subcontract were set forth verbatim in the performance bond.

## 12.0 INDEMNIFICATION

- 12.1 SUBCONTRACTOR shall secure, defend, protect, hold harmless and indemnify CONTRACTOR, COMPANY and any of their respective agents, servants and employees against any liability, loss, claims, demands, suits, costs, fees and expenses whatsoever arising from bodily injury, sickness, disease (including death resulting there from), of any persons, or damage or destruction of any property, including loss of use, arising out of or in connection with the performance of any work relating to this Contract, including extra work assigned to the Subcontractor, based upon any act or omission, negligent or otherwise, of (a) the Subcontractor or any of its agents, employees or servants, (b) any sub-subcontractor, supplier or material men of the Subcontractor or any agents, employees, or servants thereof, (c) any other person or persons. The obligations of indemnification contained herein shall exclude only those matters in which the claim arises out of the sole negligence of CONTRACTOR, COMPANY or any of their respective agents, employees or servants.
- 12.2 If SUBCONTRACTOR requires certification of any claim or the submission of cost or pricing data respecting any claim or Contract modification, SUBCONTRACTOR covenants and agrees to furnish CONTRACTOR with a certification of any and all of SUBCONTRACTOR's claims and of SUBCONTRACTOR's cost or pricing data. The SUBCONTRACTOR's certification shall be in a form satisfactory to CONTRACTOR. SUBCONTRACTOR shall indemnify, defend, exonerate, and hold harmless CONTRACTOR from any losses, claims, damages, or expenses which CONTRACTOR may suffer or incur, including attorneys' fees and related costs, as a result of SUBCONTRACTOR's failure or inability to support any part of its claim or as a result of SUBCONTRACTOR's failure to provide complete, current, and accurate cost or pricing data.
- 12.3 SUBCONTRACTOR shall pay all of the expense, cost, and attorney fees incurred by CONTRACTOR and the "CONTRACTOR's" surety in the investigation and defense of any claim, demand, or action of any third party alleging the "SUBCONTRACTOR's" nonpayment of labor or materials, alleging a right to payment from proceeds owed to SUBCONTRACTOR, or alleging the "SUBCONTRACTOR's" failure to perform obligations under this Subcontract, whether or not such allegations are valid.

## 13.0 HEALTH AND SAFETY

SUBCONTRACTOR shall take all reasonable health and safety precautions with respect to the work, comply with all health and safety measures initiated by CONTRACTOR and all applicable laws, ordinances, rules, regulations, and orders of any public or private authority for the health and safety of persons or property. SUBCONTRACTOR shall report immediately to CONTRACTOR any and all injuries, to any of SUBCONTRACTOR's employees at the site.

## 14.0 ASSIGNMENT

- 14.1 SUBCONTRACTOR shall not assign all or part of this Subcontract without written consent of CONTRACTOR, nor subcontract the whole, or part, of this Subcontract without the written consent of CONTRACTOR. SUBCONTRACTOR shall not assign any amounts due or to become due under this Subcontract without written notice to CONTRACTOR. Any assignments of subcontract proceeds and any payments made pursuant to assignments shall be subject to and conditioned upon SUBCONTRACTOR's compliance with all terms and conditions of this Subcontract, and any such assignments are expressly restricted to the amount actually collected by CONTRACTOR from COMPANY for work performed by SUBCONTRACTOR and accepted by COMPANY, less retainage, back charges, or other offsets which are chargeable by CONTRACTOR against SUBCONTRACTOR, whether on the project or otherwise. Assignees of SUBCONTRACTOR of the amounts due or to become due under this Subcontract shall indemnify and hold harmless CONTRACTOR from any and all loss, cost, claims, demands, damages or expenses, including attorney's fees, suffered by CONTRACTOR as a result of SUBCONTRACTOR's assignment of amounts due or to become due under the Subcontract.

14.2 SUBCONTRACTOR agrees to incorporate into any subcontracts or purchase orders he has with any other party, as a result of this Subcontract, all those provisions required by law to be incorporated therein, and all those provisions of this Subcontract which affect the rights of CONTRACTOR. This Subcontract shall not create a contractual relationship between CONTRACTOR and SUBCONTRACTOR's lower-tier subcontractors, suppliers or materialmen.

## 15.0 DOCUMENTS

SUBCONTRACTOR shall furnish CONTRACTOR, copies of SUBCONTRACTOR's daily report forms which shall include periodic progress report information on the status of the work being performed, materials and equipment under this Subcontract which may be in the course of preparation or manufacture, and all other reasonable Project information requested by CONTRACTOR. SUBCONTRACTOR may also be required to submit other project related documentation on a regular basis such as drawings, plans, and health and safety related documents.

## 16.0 INSPECTION AND ACCEPTANCE

If CONTRACTOR, COMPANY's Authorized Representative, or COMPANY rejects, condemns, or fails to approve any part of the Subcontract work, SUBCONTRACTOR shall, within 24 hours of receiving from CONTRACTOR notice of such determination, proceed to take down and remove such rejected, condemned, or unapproved Subcontract work and shall promptly make good such Subcontract work and all other work damaged in the removal and replacement process at no additional cost to CONTRACTOR.

## 17.0 FAILURE TO PAY CLAIMS

SUBCONTRACTOR warrants that he has sufficient funds and credit to pay currently owed bills incurred in the performance of the work hereunder without the necessity of resorting to earnings for work performed and agree that failure to pay such bills shall be a breach of this Subcontract for which CONTRACTOR may, but shall not be required to, withhold all sums otherwise payable hereunder for past and future earnings until SUBCONTRACTOR presents satisfactory evidence of payment, and in case any such bill or claim is disputed by SUBCONTRACTOR, CONTRACTOR may, for the purposes of this paragraph, consider the same to be valid until discharged and released or until satisfactory security is given for CONTRACTOR's indemnification. At CONTRACTOR's option, CONTRACTOR may, but shall not be required to pay any such bill or claim and recover the same from SUBCONTRACTOR or any Surety or deduct the same from any payments (progress or retainage) otherwise due hereunder. Any and all payments made in good faith in the belief that SUBCONTRACTOR is liable, whether liable or not, shall be conclusive of CONTRACTOR's right to reimbursement, and a sworn itemized statement thereof or the checks or other evidence of payment shall be prima facie evidence of the fact and extent of SUBCONTRACTOR's liability.

## 18.0 SUBCONTRACT PAYMENT PROCEDURES AND CONDITIONS

18.1 SUBCONTRACTOR shall submit for approval as directed by CONTRACTOR and prior to any payment request, a schedule of values for the Subcontract work with respective quantities set forth in a form and manner approved by CONTRACTOR.

18.2 CONTRACTOR shall make progress payments to SUBCONTRACTOR only if, and as permitted by, the Contract. If allowed by the Contract, CONTRACTOR shall pay SUBCONTRACTOR, as SUBCONTRACTOR work progresses, an amount equal to 90% of the value of the Subcontract works which is properly completed in strict accordance with the Subcontract documents and which are approved by CONTRACTOR's authorized representative, CONTRACTOR and COMPANY. The remaining 10% (retainage) will be paid after receipt of a final retainage invoice from SUBCONTRACTOR as per conditions of Paragraph 18.9.

## SUBCONTRACT AGREEMENT

- 18.3 SUBCONTRACTOR shall deliver to CONTRACTOR, on the day of the month stipulated by CONTRACTOR, an "Application and Certificate for Payment" itemized in accordance with the SUBCONTRACTOR's approved Schedule of Values for the work satisfactorily performed by SUBCONTRACTOR during the preceding period of performance for which SUBCONTRACTOR requests payment.
- 18.4 Payment to SUBCONTRACTOR may include materials which meet all requirements of the subcontract documents, which SUBCONTRACTOR properly intends to incorporate into the subcontract work, and which are properly stored on the project site but only to the extent allowed under the contract and actually paid to CONTRACTOR on the SUBCONTRACTOR's behalf.
- 18.5 SUBCONTRACTOR shall pay for all work, labor and services performed as required under this Subcontract. SUBCONTRACTOR shall, when requested by CONTRACTOR, provide satisfactory evidence of payment which shall include but is not limited to invoices, cancelled checks, payroll and accounting records.
- 18.6 Subject to the terms and conditions of this Subcontract, CONTRACTOR agrees to send payment for SUBCONTRACTOR's application for payment within fifteen (15) working days after CONTRACTOR receives payment from COMPANY for CONTRACTOR's application in which SUBCONTRACTOR's application is incorporated. Should the amount requested by CONTRACTOR on behalf of SUBCONTRACTOR be reduced or denied for any reason, payment to SUBCONTRACTOR will be reduced or denied accordingly.
- 18.7 In the event CONTRACTOR's retainage is reduced, CONTRACTOR may, at its option reduce the retainage of SUBCONTRACTOR in like amount provided that SUBCONTRACTOR's work is on schedule and SUBCONTRACTOR is in compliance with all the terms and conditions contained in this subcontract.
- 18.8 Notwithstanding anything to the contrary herein, payment by CONTRACTOR to SUBCONTRACTOR is a condition precedent to CONTRACTOR's right to payment from COMPANY. Progress payments to SUBCONTRACTOR shall be made only out of progress payments actually received by CONTRACTOR from COMPANY. Final payment to SUBCONTRACTOR shall be made only out of funds actually received by CONTRACTOR from COMPANY in final payment of the Contract and only to the extent said final payment reflects work of SUBCONTRACTOR which has been approved and paid by COMPANY.
- 18.9 Final payment and release of retainage shall be made at the completion of the Subcontract work, but only: (1) upon written acceptance thereof by COMPANY and COMPANY's Authorized Representative"; and (2) as a condition precedent, COMPANY has made payment and has released retainage to CONTRACTOR. Acceptance of final payment by SUBCONTRACTOR constitutes a general release of CONTRACTOR and CONTRACTOR's surety of all claims and liability of whatever nature arising out or relating to the Subcontract.
- 18.10 No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and SUBCONTRACTOR shall remain responsible and liable for performance in strict compliance with this Subcontract.
- 18.11 The Subcontract amount will be paid subject to the terms of Article 18, in monthly payments of 90% percent of the work performed in any preceding month. SUBCONTRACTOR's partial pay requests shall be submitted on forms acceptable by CONTRACTOR by the 15th of each month. **SUBCONTRACTOR will provide with each Payment Application completed LIEN and CLAIM waivers and affidavits on the forms attached hereto, Sub-Subcontractor or Supplier Partial LIEN and CLAIM Waivers and Affidavits amounting to 100% of the partial payment which was paid to SUBCONTRACTOR for the previous month by the 15th of each month. Failure to provide such forms will delay payment to SUBCONTRACTOR.**
- 18.12 Final payment, inclusive of retention, shall be paid to SUBCONTRACTOR upon approval by CONTRACTOR, receipt of final payment, inclusive of retention, from COMPANY TO CONTRACTOR, and receipt of all applicable documentation from SUBCONTRACTOR.

## 19.0 LEGAL EFFECT

- 19.1 The Contract and this Subcontract shall be interpreted together and in harmony with one another. In case of conflict between the Contract and this Subcontract, this Subcontract shall govern the relationship between CONTRACTOR and SUBCONTRACTOR. SUBCONTRACTOR must call any such conflict or discrepancy to CONTRACTOR's attention, in writing, **PRIOR** to executing this Subcontract. Any agreements hereafter made shall be ineffective to change, modify or discharge this Subcontract in whole or in part, unless such agreement is in writing and signed by both CONTRACTOR and SUBCONTRACTOR. All negotiations and agreements prior to the date of this Subcontract which are not included herein are hereby voided.
- 19.2 CONTRACTOR cannot be bound by any decision, direction, agreement, or action of any individual who is not a Corporate Officer of CONTRACTOR, except where the individual has been delegated authority in writing by a Corporate Officer and then only to the extent of the express terms of such written delegation.
- 19.3 The validity, interpretation and performance of this Subcontract shall be governed by the laws of the state of Tennessee. If any term or condition of this Subcontract is found invalid, it shall not affect the validity and enforcement of all remaining terms and provisions of this Subcontract.
- 19.4 No delay, waiver, forbearance, or failure by CONTRACTOR to exercise rights or remedies under this Subcontract or to insist upon strict compliance by SUBCONTRACTOR shall relieve SUBCONTRACTOR from strict compliance with all the terms and conditions hereof or shall waive, restrict or adversely affect any of SUBCONTRACTOR's rights and remedies as to any subsequent or conditioning failure of SUBCONTRACTOR to comply with all the terms and conditions of this Subcontract.
- 19.5 SUBCONTRACTOR's commencement of any work, whether at the project site or elsewhere, shall constitute the SUBCONTRACTOR's agreement to this Subcontract, including all of its terms and conditions, and shall further constitute SUBCONTRACTOR's acceptance of all conditions at the Project Site.
- 19.6 CONTRACTOR and SUBCONTRACTOR hereby agree for themselves, their successors, executors, administrators and assigns, to fully perform the covenants of this Subcontract which includes those documents noted in Article 2, herein, insofar as they relate in any way to any part of the work undertaken herein. This Subcontract constitutes the entire agreement between the parties.

## 20.0 RETURN OF BADGES AND PROXIMITY CARDS

- 20.1 Badges and proximity cards issued to SUBCONTRACTOR employees for this contract remain the property of the U.S. government and must be returned to the COMPANY at the earliest of any of the following, unless otherwise determined by the COMPANY:
- a. When no longer needed for this Subcontract performance.
  - b. Upon completion of SUBCONTRACTOR employee's employment.
  - c. Upon completion or termination of this Subcontract.
- 20.2 Failure by employees of SUBCONTRACTOR to return badges will result in a charge of \$1,000 per badge. The charge shall be deducted from payments otherwise due SUBCONTRACTOR or may be billed to SUBCONTRACTOR. The \$1,000 charge will not be assessed against badges that are lost or stolen during performance of this Subcontract if replacement badges are issued to allow SUBCONTRACTOR employees to return to work.

IN WITNESS WHEREOF, executed this Subcontract, the XXXXXXX 2019



# SUBCONTRACT AGREEMENT

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\_\_\_\_\_  
AUTHORIZED SIGNATURE FOR SUBCONTRACTOR

\_\_\_\_\_  
AUTHORIZED SIGNATURE FOR CONTRACTOR

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

## “XXXXX EXHIBIT A”

### SCOPE OF WORK

**General Description of Services:**

All labor and Materials for XXXXXXXXXXXXX

**Tasks:**

All work must be completed as specified under:

**Period of Performance:**





