

## MASTER TERMS AND CONDITIONS FOR PSS SUBCONTRACTS

### RECITALS

- a. PSS has entered either a general contract, master service agreement, or subcontract (hereinafter, the “**Contract**”) to perform certain work and services in connection with various projects for various clients of PSS, as more specifically set forth in the Subcontract that may be issued by PSS to Subcontractor pursuant to this Agreement;
- b. PSS desires to engage Subcontractor to perform such work and services as PSS may hereafter authorize and direct pursuant to the issuance of an executed Subcontract, with each Subcontract setting forth the client of PSS for which Subcontractor will perform its work (hereinafter, “**Owner**” and shall include the owner designated in the prime contract if PSS is itself a subcontractor) and a description of the Owner’s project, on which Subcontractor will perform its work (hereinafter, the “**Project**”);
- c. Subcontractor acknowledges and agrees that this Agreement sets forth the terms and conditions which shall apply to all Subcontracts hereafter issued by PSS; and
- d. All Exceptions or Clarifications included in any Subcontractor proposal are expressly rejected by PSS unless the Exception or Clarification is included herein or separately agreed upon in writing by an authorized representative of PSS.

### 1. TERMS AND CONDITIONS; ACCEPTANCE:

(a) This Agreement represents the entire and integrated agreement between PSS and Subcontractor (hereinafter, each referred to as a “**Party**” and both as “**Parties**”) and supersedes prior negotiations, representations, or agreements, either written or oral. This Agreement shall have a term of one year from the date of its execution, or the duration of any Subcontract, whichever is longer, and shall continue thereafter on a month-to-month basis until canceled by either Party upon thirty (30) days’ written Notice (as defined herein) to the other Party.

(b) The “**Agreement Documents**” consist of: (i) the Subcontract, including all documents referenced in or attached to the Subcontract; (ii) this Agreement, and its modifications; (iii) those provisions, conditions, or requirements in the **Contract** that PSS has with Owner or a contractor that relate or apply to the Subcontractor’s work on the Project (any other terms or conditions in the Contract specifically referenced in the Agreement Documents), and (iv) any specifications, drawings, or other documents provided by PSS. The Agreement Documents collectively comprise the agreement between PSS and Subcontractor, and each is as fully a part of this Agreement as if attached hereto and/or repeated fully herein. The Agreement Documents are intended to be cooperative and complementary; however, in the event of a conflict between or among any of the Agreement Documents, the Agreement Documents shall take precedence in the order in which they are listed in this Section.

(c) Subcontractor acknowledges and agrees that this Agreement is not an exclusive arrangement between PSS and Subcontractor with respect to any number, nature, or volume of projects or work. PSS is not obligated to request any work from Subcontractor or to enter any Subcontract with Subcontractor based on the execution of this Agreement.

(d) Subcontractor is under no obligation to accept any Subcontract.

### 2. SITE INSPECTION & MEASUREMENT

(a) Subcontractor has examined the existing field conditions as necessary for Subcontractor to determine the difficulty and cost to Subcontractor for it to perform its Work properly and completely in accordance with the terms of this Agreement. Subcontractor agrees that such site examination-inspection has included, but has not necessarily been limited to, the examination of the (1) the location, condition, layout of structures, and nature of the site and surrounding areas, (2) generally prevailing weather conditions, (3) anticipated labor supply and costs (4) availability and cost of materials, tools, and equipment, and Subcontractor has compared said conditions with the drawings and specifications relating to the Project. Subcontractor agrees that it is satisfied as to the conditions of the site to completely and timely complete its Work. No allowance shall subsequently be made to Subcontractor by any reason of any error or failure to examine as required on its part.

(b) Prior to commencing any Work, Subcontractor shall check and verify all drawing measurements and levels in relation to existing and new elevations, grades and contours to ascertain their correctness in connection with Subcontractor’s Work. Any variance discovered shall be brought to the attention of PSS in writing, within a sufficient period for PSS to notify Owner before

Subcontractor proceeds with the Work. If Subcontractor proceeds with the Work without so notifying Contractor, such action shall constitute a waiver of any rights and remedies against Contractor or any party arising out of any said variance, and in addition, Subcontractor shall be liable to Contractor for any damage sustained by reason of Subcontractor proceeding.

### 3. EXAMINATION OF AGREEMENT DOCUMENTS

(a) Subcontractor has examined and understands the terms of this Agreement and the terms and provisions of the Agreement Documents.

(b) Subcontractor has examined and studied the site and existing improvements or proposed work adjoining its Work and understands the requirements and resources needed for performing the Work. Subcontractor agrees to be bound by all interpretations of the Agreement Documents furnished by the Owner, or the Owner's representative, which are binding upon Contractor.

(c) If Subcontractor discovers any ambiguities, discrepancies, deficiencies or errors in the plans, specifications or other Agreement Documents which affect its Work, then Subcontractor agrees to promptly notify Contractor in writing, within a sufficient period for Contractor to notify Owner prior to Subcontractor commencing Work. If Subcontractor proceeds without notifying Contractor, such action shall constitute a waiver of any rights and remedies against the Contractor or any party arising out of said errors, deficiencies, discrepancies, or ambiguities; and, in addition, Subcontractor shall be liable to Contractor for any damages Contractor sustains by Subcontractor proceeding.

### 4. SUBCONTRACT WORK:

(a) The scope of Subcontractor's work (hereinafter, the "**Subcontract Work**") shall be as described in the Subcontract and outlines the terms and conditions specific to the Subcontract Work (in addition to those set forth in this Agreement), including, but not limited to, the scope, price, schedule, site requirements, specifications, drawings, and additional terms.

(b) Subcontractor shall provide and furnish all of the work, labor, supervision, services, material, and equipment described in, required, or reasonably intended or contemplated by the Agreement Documents and all items or services necessary so that the equipment, systems, and components comprising the Subcontract Work are properly connected, complete, operational, and functional in accordance with the technical requirements and specifications set forth in the Agreement Documents. The Subcontractor is solely responsible for performing all the Subcontract Work, including providing all items and services reasonably inferable from the Agreement Documents or customarily provided by competent subcontractors as a part of the proper performance of work of the type contemplated under the applicable Subcontract.

(c) A copy of the Contract shall be made available to the Subcontractor upon its request. Subcontractor assumes towards PSS, to the extent the Contract applies to the work of Subcontractor, its affiliates, and any sub-subcontractors, suppliers, materialmen, or vendors to Subcontractor, and its and their respective officers, directors, employees, and agents (hereinafter, "**Subcontractor Group**"), all obligations, rights, and duties that PSS assumes towards Owner and others under the Contract, including any liability for liquidated damages, to the extent such liquidated damages are caused by Subcontractor's delay. Those terms and conditions in the Contract that relate to or apply to the Subcontract Work (and any other terms and conditions in the Contract specifically referenced in the Agreement Documents) are included and incorporated fully herein. Subcontractor is independently responsible for reviewing all applicable terms and conditions in the Contract. In the event of any conflict between the provisions of this Agreement and the Contract, this Agreement shall prevail.

(d) Subcontractor shall be responsible for all damages incurred by PSS as a result of Subcontractor's failure to perform and complete the Subcontract Work in accordance with the requirements of the Agreement Documents and the dates set forth in the Subcontract, Project Schedule (as defined below), and/or Subcontractor Work Schedule (as defined herein), including any damages that Owner is entitled to recover against PSS under the Contract as a result of such failure. With respect to any liquidated damages set forth in the Contract or Subcontract issued to Subcontractor, Subcontractor agrees that such liquidated damages are not a penalty but constitute agreed and reasonable damages for delay to the completion of the Subcontract Work. Subcontractor agrees that such liquidated damages have been reviewed and accepted by Subcontractor in connection with the issuance of the Subcontract as an accurate representation of the costs and damages that will be incurred by PSS and Owner as a result of Subcontractor's failure to complete the Subcontract Work in accordance with the requirements of the Agreement Documents and dates specified in the Subcontract, Project Schedule (as defined below), and/or the approved Subcontractor Work Schedule.

(e) Subcontractor shall perform the Subcontract Work under the general direction of PSS in accordance with PSS and Owner's schedule for progress and completion of the Project, and any revisions thereto (hereinafter, the "**Project Schedule**"), and Subcontractor shall cooperate with Owner, PSS and other contractors and subcontractors to fulfill the obligations of the Contract per the Project Schedule.

(f) Subcontractor shall be responsible for all permits, fees, licenses (a copy of which shall be provided upon request), assessments, inspections, testing, and taxes necessary to complete the Subcontract Work. PSS is not responsible for Subcontractor's means and methods, which are the sole responsibility of Subcontractor.

(g) Subcontractor shall comply, and shall ensure that Subcontractor Group complies, with all (i) safety requirements of PSS or Owner, (ii) applicable laws, ordinances, rules, regulations, and orders of public authorities relating to the safety of persons or property, and (iii) requirements related to Owner's operations and procedures for the conduct of its business. Subcontractor shall immediately notify PSS verbally of any workplace near miss, incident, accident, injury, illness, death, or related hospitalization of any member of Subcontractor Group related to the Subcontract Work or which occurs at the Project site. A written report shall be submitted to PSS within twenty-four (24) hours of any such occurrence using the Incident/Accident Investigation Form contained in the Owner's or Project's safety program. Subcontractor shall conduct, and all applicable members of Subcontractor Group shall attend, all required Subcontract Work orientation training and site-specific training, which shall be coordinated with and comply with any related orientation or training conducted by PSS and/or Owner, prior to any member of Subcontractor Group being allowed to work at the Project site. Subcontractor shall conduct weekly safety training (e.g., toolbox meeting) with members of Subcontractor Group.

(h) Subcontractor shall always keep the Project site free from accumulation of waste materials and rubbish caused by it or by any of its subcontractors, employees, agents, or servants and at the completion of Subcontractor's Work, Subcontractor shall remove all its tools, equipment and surplus material from the premises, and Subcontractor shall further leave its Work "broom clean" or its equivalent. Should Subcontractor, at any time, fail or refuse to keep and leave the Project site clean and orderly, Contractor may do so and charge the entire cost thereof to Subcontractor.

(i) **Final Acceptance of the Subcontract Work** will occur upon the last of the following: (i) the date when the Subcontract Work is sufficiently complete and operational in accordance with the terms of the Agreement Documents to allow Owner to use and/or occupy the Subcontract Work for its intended purpose; (ii) the date when all tests, certifications, and commissioning activities required by the Agreement Documents have been satisfactorily completed; (iii) the date when all consents, approvals, certificates, or inspections necessary for Owner's use of the Subcontract Work (including any reviews or approvals required from applicable governmental authorities) have been obtained; (iv) acceptance of the Subcontract Work by Owner as required by the Contract; and/or (v) the date when all necessary lien waivers, affidavits, or other documents have been submitted by Subcontractor as required by the Agreement Documents.

**5. SCHEDULE:** Time is of the essence for performance of this Agreement. Subcontractor shall perform in strict accordance with the Project Schedule (and any revisions thereto) and the Subcontractor Work Schedule (as defined below). Subject to Subcontractor's right to a Change Order as set forth herein, PSS shall have the right to modify the time and order that the Subcontract Work is performed to achieve satisfactory performance of all obligations under the Contract.

(a) The Subcontract shall set forth the required dates for completion of each applicable aspect of the Subcontract Work. Within seven (7) calendar days after issuance of the Subcontract, the Subcontractor may be required to submit a schedule for progress and completion of the Subcontract Work (hereinafter, the "**Subcontractor Work Schedule**"), which shall be based on the dates set forth in the Subcontract and prepared in accordance with requirements provided by PSS.

(b) Any materials to be furnished by Subcontractor hereunder shall be furnished according to the Subcontract, Project Schedule, and/or approved Subcontractor Work Schedule, and in such fashion as to achieve Final Acceptance of the Subcontract Work within the applicable dates set forth in the Subcontract, Project Schedule, and/or Subcontractor Work Schedule. Subcontractor shall not, by delay or otherwise, interfere with or hinder the Project, any other contractor performing other work on the Project, or the activities of PSS or Owner.

(c) Subcontractor shall be responsible for all delay damages attributable to its neglect or fault or the fault of any member of Subcontract Group for whom Subcontractor has contractual responsibility to PSS.

(1) Subcontractor acknowledges and agrees that no extension to the milestone or completion dates specified in the Subcontract, Project Schedule, and/or Subcontractor Work Schedule shall be granted except as follows: (i) pursuant to the agreement of PSS as set forth in a Change or (ii) to the extent required by this Agreement in the event of an Excusable Delay (as defined below).

(2) An "**Excusable Delay**" means any of the following, but only if such event materially impacts the critical path of the Subcontract Work: (i) material delay caused by PSS or Owner, (ii) delay caused by Force Majeure (defined below), and/or (iii) material change in the Subcontract Work ordered by PSS and not due to Subcontractor's fault.

(d) In the event that Subcontractor or PSS is rendered unable by Force Majeure (as defined below) to perform, in whole or in part, its obligations under any of the Agreement Documents, other than its obligations to make payments of money due

hereunder, such Party shall, within forty-eight (48) hours of such Force Majeure event arising, give written Notice to the other Party, stating full particulars of such Force Majeure event, including the obligation that is to be delayed or prevented and the estimated duration of any delay. The obligation that the Party giving Notice (is rendered unable to carry out will be suspended during the Force Majeure event. No Force Majeure affecting the performance of any obligation of either Party will relieve that Party from performance of any other obligation not affected by the event of Force Majeure, and the affected Party shall promptly take all commercially reasonable steps to mitigate the effect of such Force Majeure.

(1) **“Force Majeure”** means any event beyond the control of the Party claiming to be affected thereby, and which by the exercise of reasonable care and diligence such Party is unable to prevent, including Acts of God, impacts of weather that could not be reasonably anticipated, fire, explosion, war, riots, strikes, labor disputes, and embargo or governmental or court orders or changes to regulations.

(2) With respect to any Force Majeure claimed by Subcontractor, Subcontractor will only be entitled to relief if and to the extent the Force Majeure event delays the performance of the Subcontract Work that is on the critical path of the then current Project Schedule and/or Subcontractor Work Schedule. To the extent a Force Majeure event causes such delay, equitable adjustment to the Project Schedule and/or Subcontractor Work Schedule is Subcontractor’s sole and exclusive remedy.

**6. PRICE; RETAINAGE:** PSS shall pay Subcontractor in accordance with the terms in the Subcontract for its satisfactory performance of the Subcontract Work and subject to any additions or deletions made in accordance with this Agreement. Retainage will be ten percent (10%), or as specified in the Subcontract. The retainage shall not be released until Final Acceptance of the Subcontract Work or such earlier time as required by Applicable Law (and then subject to such conditions, restrictions, and limitations as required or permitted by such Applicable Law). Any unit prices or alternates accepted by PSS and Owner shall be attached to the Subcontract and incorporated as a part of this Agreement.

**7. PROGRESS PAYMENTS:** Subcontractor agrees that a condition precedent to payment is Subcontractor providing PSS’s Designated Representative (as identified in the Subcontract) with a schedule of values. The period covered by each progress payment shall be one calendar month. Applications for monthly progress payments shall be submitted to PSS in accordance with the date or schedule set forth in the Subcontract, or otherwise agreed in writing, based upon the schedule of values and shall reflect the percentage completion achieved. If it is complete and timely received, PSS shall include the approved amounts reflected in Subcontractor’s application with its next application for payment submitted to Owner. If untimely or returned to Subcontractor for revision, PSS shall submit Subcontractor’s application with the next application it is entitled to submit to Owner following Subcontractor’s complete and timely submission. Progress payments of amounts approved by PSS and, if applicable, Owner, less retainage, if required in the Subcontract, and any other amounts PSS is entitled to withhold, shall be made within ten (10) days of receipt of payment by Owner to Contractor. Payment to Contractor by Owner shall be an express condition precedent which must occur before Contractor shall be obligated to pay Subcontractor the amount of Subcontractor’s duly authenticated and approved invoice. Subcontractor expressly assumes the risk of non-payment by the Owner.

(a) All payments are conditioned upon inspection and acceptance of the Subcontract Work by Owner and PSS and are subject to PSS’s receipt of partial lien waivers (in the form attached hereto as **Exhibit B** or in the form attached to the Contract), warranties, and any other documentation required by PSS. PSS, Owner, and their respective representatives shall always have access to the Subcontract Work and materials, wherever they may be located, to review the progress and status thereof. Subcontractor shall, at its own expense, provide such access. Any Subcontract Work or materials found to be defective or non-conforming during such review may be rejected by PSS or Owner and shall be promptly replaced, repaired, or re-performed by Subcontractor at its expense. In addition, PSS shall be entitled to occupy or use any portion of the Subcontract Work which has been either partially or fully completed by the Subcontractor Group before Final Acceptance. Any review or failure to inspect or evaluate, or any occupation or use of the Subcontract Work, by PSS or Owner, shall not be considered an acceptance of the Subcontract Work or a waiver of any defects or non-conformance and shall not affect, diminish, or relieve Subcontractor of its responsibilities under the Agreement Documents.

(b) PSS may withhold funds from Subcontractor to the extent necessary to protect PSS and Owner from loss or damage to the extent that Subcontractor is responsible for: (i) failure to timely perform the Subcontract Work, (ii) failure to properly pay a member of Subcontractor Group, (iii) failure to promptly correct rejected, defective, or nonconforming Subcontract Work, (iv) uninsured third-party claims involving Subcontractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Subcontractor furnishes PSS with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established, (v) amounts withheld by Owner from PSS on account of the Subcontract Work, or (vi) any other reason allowable by Applicable Law.

(c) Subcontractor expressly agrees it shall not assert lien rights prior to the time that an undisputed payment is past due from PSS under the terms of this Agreement. SUBCONTRACTOR SHALL NOT SEND ANY LIEN NOTICE OR RECORD ANY LIEN UNLESS AND UNTIL SUCH TIME AS PSS IS IN DEFAULT OF ITS PAYMENT OBLIGATIONS UNDER THIS

AGREEMENT, AND THEN ONLY AFTER TEN (10) DAYS WRITTEN NOTICE BY CERTIFIED MAIL TO PSS OF THE (A) SUBCONTRACTOR'S CLAIM OF PSS'S PAYMENT DEFAULT, AND (B) SUBCONTRACTOR'S INTENT TO ASSERT ITS LIEN RIGHTS. A breach of this provision by Subcontractor shall entitle PSS to recover damages, attorneys' fees, and costs to have any premature lien notice withdrawn or any prematurely recorded lien cancelled.

(d) Invoices received by PSS more than one hundred eighty (180) days following the performance of labor or the delivery of materials or equipment shall not be paid unless the billing is included in an approved Change Order (as defined herein).

**8. FINAL PAYMENT:** Except as otherwise agreed to by the parties in writing, final payment to Contractor by the Owner shall be an express condition precedent which must occur before Contractor shall be obligated to make final payment to the Subcontractor.

In addition, final payment by Contractor to the Subcontractor shall not become due and payable until the following other express conditions precedent have been met:

(a) the completion and *Final Acceptance of the Work* by Owner and/or Contractor;

(b) Subcontractor shall submit evidence to PSS's Designated Representative that all amounts due in connection with the Subcontract Work have been paid (including lien releases) and Subcontractor's final payment application shall be accompanied by a final lien waiver, in the form of **Exhibit C**, or the form attached to the Contract;

(c) execution and delivery by the Subcontractor, in a form satisfactory to Contractor, of a general release of claims and liens running to and in favor of Owner and Contractor; and

(d) complete and full satisfaction of all claims, demands and disputes, and all obligations and responsibilities of Subcontractor, arising out of or related to the Subcontract (including, if applicable, prevailing wages), including those as between Contractor and Subcontractor as well as those between Subcontractor and any third party.

The final payment shall be due within thirty (30) days after all these express conditions' precedent have been met.

Should there be any such claim, obligation or lien or unsatisfied obligation or responsibility whether before or after final payment is made, the Subcontractor shall pay, refund or deliver to Contractor (1) all monies that Owner or Contractor shall pay in satisfying, discharging or defending against any such claim, obligation or lien or any action brought or judgment recovered thereon and all costs and expenses, including legal fees and disbursements, incurred in connection therewith; and (2) and such amounts as Owner or Contractor shall, in their sole discretion, determine to be an amount sufficient to protect Owner or Contractor therefrom. Such refund and payment shall be made within ten (10) days of request by Contractor to Subcontractor for same.

**9. NOTICE:** When any **Notice** is required under this Agreement, such Notice shall be given via U.S. Certified Mail or overnight courier, with an advance courtesy copy via electronic mail, to the Parties according to the addresses and contacts shown on the Subcontract.

**10. WARRANTY:**

(a) Subcontractor warrants that: (i) all materials and equipment supplied by Subcontractor will be new and of good quality unless otherwise specifically required or permitted by this Agreement; (ii) Subcontractor is familiar with, and hereby accepts responsibility for, all conditions, risks, contingencies, and other circumstances related to the performance of the Subcontract Work; and (iii) Subcontractor is experienced in the Subcontract Work to be undertaken on behalf of PSS, possesses the skills and resources needed to complete the Subcontract Work, and has the authority to fulfill its obligations under this Agreement.

(b) Subcontractor further warrants that: (i) its work shall be of the highest quality; (ii) performed in a good and workmanlike manner, in strict conformity with the best industry practices, and in a manner protective of all persons working on the Project, the public, and the environment; (iii) comply with the terms of the Agreement, plans and specifications; and (iv) will be free from premature failure or defects in material or workmanship. Items not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

(c) The Warranty Period shall be a period of twelve (12) months from the date that Subcontractor completes all the Subcontract Work or the period set for warranties in the Subcontract or Contract, whichever is longer. In addition to all other remedies provided to PSS under this Agreement, Subcontractor agrees to repair or replace all defective or nonconforming items free of charge during the Warranty Period, normal wear and tear excepted. Subcontractor agrees to defend, indemnify and hold harmless PSS against all liability, loss, and damage, including without limitation, reasonable attorney's fees, sustained by PSS, because of Subcontractor's

breach of any express or implied warranty. Such indemnity is in addition to other remedies afforded to PSS under this Agreement or by Applicable Law.

(d) All warranties related to or attaching to any equipment or material incorporated into the Subcontract Work are hereby assigned and transferred to PSS and Owner, each of whom shall enjoy the full benefit of such warranties. Subcontractor agrees to execute all documents necessary to evidence the assignment of such warranties as provided herein.

**11. NO ASSIGNMENT; SETOFF:** Subcontractor shall not assign any right or obligation under this Agreement without the prior written consent of PSS. PSS may set off against any amounts due Subcontractor under this Agreement from amounts properly due PSS from Subcontractor in connection with this or any other agreement.

**12. SUBCONTRACTING:** Subcontractor shall not subcontract any portion of the Subcontract Work without the prior written consent of PSS. Subcontractor shall ensure that all of its sub-subcontractors are bound by all obligations under the Agreement Documents that directly or indirectly apply to the portion of the Subcontract Work performed by such sub-subcontractor, specifically including, but not limited to, the provisions regarding insurance, indemnity, liens, safety, and warranty. Notwithstanding anything herein on the contrary, Subcontractor shall be fully liable for any acts or omissions of its sub-subcontractors and shall remain responsible to PSS for all obligations and liabilities with respect to any subcontracted Subcontract Work.

**13. CHANGES:** Subcontractor shall perform any changes in the Subcontract Work which are ordered by PSS in writing. Any modification to the Project Schedule or the price set forth in the applicable Subcontract (hereinafter, the “**Subcontract Price**”) shall be effective only when authorized by a Change Order executed by PSS. No modifications shall be made for work not approved in advance by PSS in the form of a Change Order. Any request by Subcontractor for an adjustment to the Project Schedule or Subcontract Price must be made to PSS’s Designated Representative within three (3) days, excluding weekends and holidays, after Subcontractor is on notice of such changes, or Subcontractor waives its rights to request an adjustment to the Project Schedule or Subcontract Price. Subcontractor shall continue its performance during the negotiation of Change Orders.

(a) To be effective, a Change Order must be in writing, set out the details of a change to the price, scope, schedule, drawings, or any other details of an applicable Subcontract, and be signed by both PSS and Subcontractor. Subcontractor acknowledges and agrees that no person or entity other than PSS’s Designated Representative has the authority to direct any such change.

(b) Should such alterations to, additions to, or deletions from the Work be required, the Subcontractor shall promptly furnish to PSS a detailed breakdown showing the difference in quantity of labor, materials and equipment affected by such alterations, additions or deletions, and a fair and reasonable valuation of the Work altered, added or deleted in accordance with the provisions of the Contract, including the provision for acceptance of the submitted costs. PSS shall in no event be liable to Subcontractor for a greater sum than it obtains from the Owner for such additional Work, less reasonable overhead and profit to PSS. Payment by PSS for such extra Work shall become due only after PSS receives payment therefore from the Owner. Any deduction taken by the Owner shall be controlling as to the deduction to be made to Subcontractor's contract price. All such Work shall be executed under the conditions of the Agreement Documents, and all clauses of the Agreement Documents shall apply to any changes, additions, deletions, deviations or extra Work in like manner.

(c) If PSS and Subcontractor are unable to agree as to the fair value of the altered, added, or deducted Work, the Work as so changed shall continue and Subcontractor shall not delay in any manner, the performance of such Work.

(d) The Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation or damages for any Change Order or change in Scope of Work, except to the extent that PSS has actually recovered corresponding cost reimbursement, compensation or damages from the Owner under the Contract for such Change Order or change in scope, and then only to the extent of the amount, if any, which PSS on behalf of Subcontractor, actually received from the Owner on account thereof. Notwithstanding any term or provision herein to the contrary, Subcontractor and PSS, expressly waive and release all claims or rights to recover lost profit (except for profit on Work actually performed), recovery of overhead (including home office overhead), and any other indirect damages, costs or expenses in any way arising out of or related to the Agreement, including the breach thereof by PSS, delays, charges, acceleration, loss of efficiency or productivity disruptions and interferences with the performance of the Work.

**14. TERMINATION BY THE OWNER:** If Owner terminates all or any part of the Contract which includes the Subcontract Work, PSS shall provide Subcontractor with written Notice of the termination. Termination of this Agreement shall be effective upon Subcontractor’s receipt of such Notice. Subcontractor shall immediately cease work and take all reasonable steps to protect the Subcontract Work and mitigate any costs. Subcontractor shall promptly submit to PSS’s Designated Representative all requests for payment for work executed and costs incurred due to such termination to allow timely submission to Owner. Subcontractor agrees that PSS’s receipt of payment from Owner for such amounts shall be a condition precedent to PSS’s obligation to pay Subcontractor for the same. Subcontractor shall not be entitled to overhead and profit on work not executed.

**15. TERMINATION BY PSS:** PSS may terminate this Agreement, in whole or in part, for its convenience by providing Subcontractor with written Notice. Subcontractor agrees to waive any and all claims, demands, suits, causes of action, legal or administrative proceedings, liabilities, damages, losses, costs or expenses (including, without limitation, court costs, reasonable experts' and attorneys' fees), liens, fines, and penalties (hereinafter, "Claims") relating to such termination, including for loss of anticipated profits and other consequential damages on account thereof, and agrees that the sole remedy for such termination will be to receive the sum of the following: (i) all amounts due and not previously paid to Subcontractor for the portion of the Subcontract Work satisfactorily completed prior to Subcontractor's receipt of the Notice of termination; and (ii) all amounts owing for any Subcontract Work that PSS specifically requests Subcontractor perform after Subcontractor receives the Notice of termination. This Agreement may also be terminated by PSS for cause in case of: (i) Subcontractor's breach of a material term or condition of this Agreement; (ii) Subcontractor's failure to correct any defect within five (5) days after receiving written Notice thereof, or commence to cure timely and diligently continue curative work until the defect(s) is corrected; (iii) Subcontractor's failure to comply with any Applicable Law or material safety rule and/or procedure; (iv) Subcontractor's responsibility for any theft or misappropriation of the property of PSS or Owner; or (v) upon the bankruptcy, liquidation, or dissolution of Subcontractor, if an encumbrance takes possession or a receiver is appointed over any of its property or assets, if it makes any voluntary arrangement with its creditors or becomes subject to an administration order. Termination on this last basis shall take effect immediately upon receipt of written Notice by Subcontractor. For the other cause bases, Notice of default shall be given by PSS, in writing, including specific charges of default and providing Subcontractor with five (5) days to cure or commence its cure and pursue with diligence. In the event Subcontractor fails to correct such defective or nonconforming Subcontract Work or commence its cure and pursue with diligence within five (5) days after receiving the Notice of default, PSS shall have the right to do so (either directly or by retaining another person or entity to perform the required corrective work) and Subcontractor shall be liable to PSS for the cost of such work and all other costs, damages, and claims resulting from such failure by Subcontractor. In the event of termination for cause, Subcontractor shall not be entitled to further payments under this Agreement. Subcontractor shall be liable to PSS for all costs to complete the Subcontract Work. Such costs shall be deducted from amounts due Subcontractor in accordance with this Agreement and the balance released to Subcontractor after the completion of the Subcontract Work. If the balance due on this Agreement is insufficient to compensate PSS for the amounts due for completion, Subcontractor shall be liable for such amounts. In no case shall Subcontractor be entitled to overhead and profit on work not executed unless such amounts are paid to PSS by Owner. In the event any termination for cause is later deemed improper, it shall be deemed a termination for convenience.

**16. TERMINATION BY SUBCONTRACTOR:** Subcontractor may terminate its obligations under any Subcontract: (i) if the Subcontract Work has been stopped for at least sixty (60) consecutive days, (ii) because the Subcontractor has not received progress payments due in violation of this Agreement, or (iii) on any basis that PSS can terminate the Contract. Subcontractor must provide PSS with at least ten (10) days' written Notice before the termination may become effective.

**17. SUSPENSION BY PSS:** PSS may suspend the Subcontract Work in accordance with the provisions for suspension set forth in the Contract. Upon receipt of Notice of suspension from PSS, Subcontractor shall, unless instructed otherwise, (i) discontinue the Subcontract Work or the part of the Subcontract Work detailed in the Notice, on the date and to the extent specified; and (ii) secure and protect the Subcontract Work or part thereof as required by PSS. PSS may, by further Notice, instruct Subcontractor to resume the Subcontract Work or part thereof as specified by PSS, and Subcontractor shall resume the Subcontract Work at the time specified in the Notice or, if no time is specified, as soon as reasonably practicable. Subcontractor shall be entitled to compensation for such suspension to the same extent that PSS is entitled to compensation under the terms of the Contract.

**18. COMPLIANCE WITH LAWS; LIEN INDEMNIFICATION:** Subcontractor shall comply with and continue compliance with any applicable federal, state, local or other constitution, charter, act, statute, law, ordinance, code, building code, rule, regulation, specified standards or objective criteria contained in any applicable permit or approval (which standards or criteria must be met in order for the Subcontract Work to be performed lawfully) or other legislative or administrative action of the United States of America, the State of Louisiana, (or such other state where the Project is located) or any agency, department, authority, political subdivision or other instrumentality thereof having jurisdiction over Subcontractor or the Subcontract Work, or a final decree judgment or order of a court (hereinafter, "Applicable Law"), including those from which liability may accrue to PSS from any violation thereof. Subcontractor shall be liable to PSS for all loss, cost, or expense attributable to any acts or omissions by Subcontractor, or any other member of Subcontractor Group, for failure to comply with Applicable Law, including fines, penalties, or corrective measures. Further, as long as PSS makes payment in accordance with the terms of this Agreement, Subcontractor shall defend, indemnify and hold harmless PSS against all liens asserted against the Project in connection with the Subcontract Work including, without limitation, reasonable attorneys' fees, and Subcontractor shall take all steps necessary to have such liens removed at its sole expense. Subcontractor's failure to comply with this Section shall constitute a material breach of this Agreement.

**19. CHOICE OF LAW:** All disputes and causes of action arising out of this Agreement shall be governed by the laws of the State designated in the Contract, to the extent allowed by Applicable Law. If no designation is made in the Contract, the law of the State of Louisiana, without regard to its conflicts of laws principles, shall apply.

**20. DISPUTE RESOLUTION:** Any Notice of Claim or default shall be given as required herein. All Claims, disputes, and matters arising out of or relating to this Agreement shall be submitted, at PSS's option, to either litigation (pursuant to Section 20(a)

below) or arbitration (pursuant to Section 20(b) below). Any Claim, dispute, and/or matter filed against PSS by Owner or a third party arising out of or related to the Project, whether by litigation or arbitration, is subject to the terms set forth in Section 20(c) below.

(a) At PSS's option, any claims, disputes, and matters arising out of or relating to this Agreement may be submitted to litigation in the exclusive venue of Ascension Parish, Louisiana, to the exclusion of any other courts, forums, and venues. The Parties waive rights to contest the exclusivity of such forum, including any rights based upon the doctrine of forum non-conveniens. Subcontractor unconditionally submits to the jurisdiction of the aforementioned courts and unconditionally agrees to accept service of process issued out of such courts by registered or certified mail addressed to it as indicated in Notices. **The Parties hereby waive their rights to jury trial.**

(b) At PSS's option, any and all claims, disputes, and/or matters arising out of or relating to this Agreement may be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules then in effect, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be Gonzales, Louisiana and all arbitration proceedings shall be conducted in English. For claims greater than \$2,000,000, there shall be three arbitrators, unless the Parties agree on a single arbitrator. In the absence of such agreement, within ten days after the initiation of an arbitration proceeding, PSS shall select one arbitrator and Subcontractor shall select one arbitrator, and those two arbitrators shall then select, within ten days, a third arbitrator, and the decision in writing of at least two of the three arbitrators shall be final and binding upon the Parties.

(c) Should PSS become a party to either litigation or arbitration in a forum designated by the Contract relating to the Project, PSS may, at its sole option, assert claims against Subcontractor in such litigation or arbitration.

(1) Should PSS assert claims in such litigation, initiated by Owner or a third party, then Subcontractor unconditionally submits to the jurisdiction of the court or arbitration designated in the Contract and unconditionally agrees to accept service of process issued out of such court or arbitration by registered or certified mail addressed to it as indicated in Notices.

(2) Should PSS assert claims in such arbitration, Subcontractor agrees to join in the arbitration, subject to any rules required in the Contract, and submit all Claims it might have against PSS for arbitration in the same proceeding.

**21. CLAIMS; NOTICE:** Subcontractor hereby waives and releases PSS for any claims which it has or claims to have for damages or additional costs claimed to have been caused by an act or omission by PSS unless Subcontractor delivers to PSS:

(a) Notice with respect thereto not later than five (5) days after the commencement of the alleged cause of such damage or additional costs;

(b) Within five (5) days after the cause thereof shall have ceased, a full accounting of the amount of such damage and additional costs claimed by Subcontractor;

(c) Subcontractor shall file with PSS similar notices with respect to any claim which it may have for damages or additional costs claimed to have been caused by Contractor's other subcontractors, but Contractor shall not be liable with respect thereto and Subcontractor shall settle same directly with the subcontractor claimed to be liable; and

(d) Subcontractor shall file with PSS similar notices, and such additional notices and documentation as are required by the Agreement Documents, with respect to claims for damages and additional costs against the Owner, Owner's representative, Owner's other contractors and/or their subcontractors. PSS, to the extent provided by the Agreement Documents, shall deliver the same to the Owner or other party, but the prosecution of such claims shall be at Subcontractor's sole expense and PSS shall not have any liability with respect thereto.

It shall be an express condition precedent to any obligation on the part of PSS to make payment of any such cost, reimbursement, compensation or damages to the Subcontractor hereunder that Contractor shall first be determined to be entitled to such compensation on behalf of Subcontractor and then receive such payment from the Owner. Subcontractor expressly acknowledges that Contractor is not obligated or required to pursue Subcontractor claims as against Owner if PSS, in its sole discretion, after review of Subcontractor's claim, has deemed the claim to lack merit in whole or in part.

Notwithstanding any term or provision herein to the contrary, Subcontractor expressly waives and releases all claims or rights to recover lost profit (except for profit on Work actually performed), recovery of overhead (including home office overhead), and any other indirect damages, costs or expenses in any way arising out of or related to the Agreement, including the breach thereof by PSS, delays, charges, acceleration, loss of efficiency or productivity disruptions and interferences with the performance of the Work.

## 22. EXTENSIONS OF TIME

(a) If Subcontractor is delayed so that it will not be able to complete its Work within the time specified herein by any act or omission that is not caused by or attributable to Subcontractor in any way, then Subcontractor, subject to the approval of PSS and the Owner, may be granted an equitable extension of time equivalent to the time lost by reason of the foregoing, for the completion of the Work so delayed; provided, however, that as a condition precedent to being granted an extension of time (i) Subcontractor shall have notified PSS of any claim it has or claims to have for an extension of time in writing within five (5) days after the commencement of such delay, or less if so required of PSS by the Agreement Documents and (ii) Subcontractor shall have demonstrated that it could not have anticipated or avoided such event and has used all reasonably available means to minimize the consequences thereof. In the event of such delay, Subcontractor shall not be entitled to any increase in the Contract Price provided herein and shall not be entitled to any damages as a result of such delay, otherwise the Subcontractor's only remedy being an extension of time as provided herein unless Owner compensates PSS for Subcontractor's delays and associated costs. Subcontractor expressly waives all rights with respect to any such cause or causes for which timely notice hereunder was not provided to PSS.

(b) No extension of time shall be granted for delays on account of or resulting from, weather conditions except only for catastrophic weather conditions subject to provisions and requirements of Agreement Documents; nor shall Subcontractor be granted any extension of time for delays resulting from interruptions to or suspension of its Work to enable other contractors or subcontractors to perform their Work.

(c) The Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation or damages for any delay, disruption, hindrance, or interference to the Work except to the extent that PSS has actually recovered corresponding cost reimbursement, compensation or damages from the Owner under the Contract for such event and then only to the extent of the amount, if any, which PSS on behalf of the Subcontractor, actually receives from the Owner. Notwithstanding any term or provision herein to the contrary, Subcontractor expressly waives and releases all claims or rights to recover lost profit (except for profit on Work actually performed), recovery of overhead (including home office overhead), and any other indirect damages, costs or expenses in any way arising out of or related to the Subcontract, including the breach thereof by PSS, delays, charges, acceleration, loss of efficiency or productivity, disruptions or interferences with the performance of the Work.

(d) Subcontractor hereby acknowledges that PSS is not obligated or required to pursue any claim by Subcontractor as against Owner if PSS, in its sole discretion, after review of Subcontractor's claim, has deemed the claim to lack merit in whole or in part.

(e) If the Contract provides for liquidated damages for delay, or if PSS is otherwise liable to Owner for delay damages, Subcontractor shall be liable for any liquidated damages or other damages which may be assessed by Owner to the extent attributable to unexcused delay caused in whole or in part by the Subcontractor or any other person or entity for which Subcontractor is responsible. Any delay which is only partly the fault of Subcontractor or those for whom PSS is responsible, PSS shall make a reasonable allocation of liquidated damages or other delay damages among the parties responsible and such allocation shall be final unless Subcontractor demonstrates that there is no reasonable basis for the allocation.

**23. INDEMNIFICATION:** To the fullest extent permitted by Applicable Law, Subcontractor shall defend, hold harmless and indemnify PSS, its affiliates and subsidiaries, and its and their respective officers, directors, employees, and agents (hereinafter, the "Indemnified Parties") from and against all threatened and actual Claims, suits, demands, and damages of any kind, including reasonable attorneys' fees and other expenses incident thereto, whether groundless or not, on account of personal injury, wrongful death, or property damage (other than to the Subcontract Work itself to the extent it is covered by builder's risk insurance) which is alleged to, and to the extent it, arises, in whole or in part, out of: (i) Subcontractor's performance of the Subcontract Work, breach of this Agreement, or as a result of the action or inaction of a member of Subcontractor Group, with respect to the Project; (ii) Subcontractor's failure to pay a member of Subcontractor Group as required for work performed by such person or entity; and/or (iii) any conduct, action, or inaction, by a member of Subcontractor Group that is contrary to the Applicable Law, regardless of whether or not such Claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Subcontractor shall also indemnify, defend and hold harmless the Indemnified Parties from and against Claims attributable to economic loss but only to the extent such economic loss was caused by or attributable to: (i) Subcontractor's performance of the Subcontract Work, a breach of this Agreement, or as a result of the action or inaction of a member of Subcontractor Group, with respect to the Project; (ii) Subcontractor's failure to pay a member of Subcontractor Group as required for work performed by such person or entity; and/or (iii) any work performed by a member of Subcontractor Group that is contrary to Applicable Law, regardless of whether or not such Claim, damage, loss, or expense is caused in part (but not solely) by a party indemnified hereunder. PSS shall be entitled to reimbursement from Subcontractor for all costs and attorneys' fees incurred to enforce Subcontractor's obligations under this Section. Subcontractor shall also indemnify, defend and hold harmless the Indemnified Parties from and against Claims or damages attributable to Subcontractor's use of any equipment of any kind that is owned or rented by PSS or Owner. Subcontractor's indemnification obligation shall be in addition to any rights granted to PSS by Applicable Law or elsewhere in this Agreement and shall survive termination of this Agreement. The indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for PSS or Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit

acts. If any provisions of this Section or the application thereof shall for any reason and to any extent be invalid or unenforceable, then that portion shall be curtailed as needed to bring it within the Applicable Law, and the remainder of this Section and the application of such provisions to other persons, circumstances, and jurisdictions shall not be affected thereby, but rather shall be enforced to the maximum extent permissible under Applicable Law.

**24. STATUTORY EMPLOYER:** In all cases where Subcontractor's employees (whether direct, borrowed, special, or statutory employees) are covered by the Louisiana Worker's Compensation Act, La. R.S. 23:1021 *et seq.*, the Parties agree that PSS and Owner shall be and hereby are designated as the statutory employers of Subcontractor's direct, borrowed, special, and statutory employees with respect to the Subcontract Work, pursuant to La. R.S. 23:1061(A)(3). The Parties further agree that the goods and/or services provided by Subcontractor pursuant to this Agreement are an integral part of, and are essential to, Owner's and PSS's ability to generate goods, products, and services for the Subcontract Work, pursuant to La. R.S. 23:1061(A)(1). This provision is included for the sole purpose of establishing a statutory employer relationship to provide PSS and Owner with the benefits and protections afforded statutory employers under Louisiana law, as expressed in La. R.S. 23:1061, and is not intended to create an employer/employee relationship for any other purpose. In the event that PSS and/or Owner are required to pay worker's compensation benefits to Subcontractor's direct, borrowed, special, and/or statutory employees, whether as an actual or alleged statutory employer pursuant to La. R.S. 23:1061 or as an actual or alleged special employer pursuant to La. R.S. 23:1031(C), PSS and Owner shall be entitled to indemnity from Subcontractor for any such benefit payments.

**25. INSURANCE:** Subcontractor assumes all risk of damage or injury to property or equipment Subcontractor owns or controls. Subcontractor shall purchase and maintain insurance which will provide coverage for Subcontractor's operations and completed operations, as well as all obligations set forth in this Agreement in the following types and limits:

(a) Commercial General Liability Insurance. Subcontractor shall maintain commercial general liability (or equivalent) insurance written on the most current ISO CGL coverage form, providing contractual liability coverage and personal injury liability coverage for claims arising out of the Subcontract Work for personal and advertising injury, bodily injury, and property damage. Coverage will only apply to Subcontract Work performed on the Project. The coverage shall be written with the following minimum annual limits of liability: (a) a combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per occurrence, with Two Million Dollars (\$2,000,000) General Aggregate and Two Million Dollars (\$2,000,000) Products and Completed Operations Aggregate, and (b) for personal injury and advertising injury of One Million Dollars (\$1,000,000) for any one person. The commercial general liability insurance policy shall include the following terms and coverage: (a) premises and completed operations; (b) products and completed operations; (c) explosion, collapse, and underground (XCU) coverages; (d) contractual liability covering Subcontractor's indemnification obligations set forth in the Agreement Documents; (e) sudden and accident pollution; (f) independent contractors' coverage; and (g) severability of interest clause.

(b) Workers' Compensation and Employer's Liability Insurance. Subcontractor shall maintain workers' compensation insurance and such other forms of insurance which Subcontractor is required to maintain in order to comply with Applicable Law and any statutory limits under workers' compensation laws of the state of Louisiana (and any other location in which the Subcontract Work is to be performed) including USL&H coverage (if any exposure exists), where applicable, and employer's liability (including occupational disease, injury or death) coverage with limits of One Million Dollars (\$1,000,000) per accident, One Million Dollars (\$1,000,000) for disease, and One Million Dollars (\$1,000,000) for each employee, which shall cover all of Subcontractor's employees, whether full-time, leased, temporary, or casual, who are engaged in the Subcontract Work.

(c) Automobile Liability Insurance. Subcontractor shall maintain automobile liability insurance (including coverage for owned, non-owned and hired automobiles) covering vehicles used by Subcontractor in connection with the Subcontract Work in an amount of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage. Such coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 "any auto." Subcontractor's automobile liability insurance coverage shall contain no-fault insurance provisions or other endorsements in accordance with Applicable Law. To the extent the Subcontract Work involves hauling any Hazardous Materials, coverage shall be endorsed to include the MCS-90 endorsement.

(d) Umbrella or Excess Liability Insurance. Subcontractor shall maintain umbrella/excess insurance on an "occurrence" basis covering claims in excess of the underlying insurance in the amount of Five Million Dollars (\$5,000,000) per occurrence and in the annual aggregate, and on a form at least as broad as the underlying insurance policies.

(e) Equipment, Supplies and Materials. All construction aids, including equipment, supplies, materials, construction trailers or other temporary buildings and their contents, temporary scaffolding, personal property, tools or clothing of workers, cranes, and mobile equipment, (a) belonging to Subcontractor or (b) used by or on behalf of Subcontractor for its performance under this Agreement ("Subcontractor's Property"), which are not intended to become a permanent part of the completed Subcontract Work, whether any of the foregoing are owned, leased, rented, borrowed, or used, shall be brought to and kept at the Project site at the sole cost, risk, and expense of Subcontractor, and PSS shall not be liable for loss or damage thereto. Responsibility for obtaining insurance coverage covering physical loss or damage to any of the foregoing shall remain the responsibility of Subcontractor. Should such

property be insured, said insurers shall waive rights of subrogation against PSS and any other subcontractors engaged by PSS. Any insurance policy covering Subcontractor's Property against loss or damage shall include an endorsement waiving the insurer's right of subrogation against the "Additional Insureds". If Subcontractor chooses to self-insure this risk, it is agreed that the Subcontractor and/or its subcontractors waive any claim for damage or loss to Subcontractor Property in favor of the "Additional Insureds".

(f) Builder's Risk Insurance. If required by PSS in the Subcontract, Subcontractor shall provide a builder's risk insurance policy. If a claim is made by the Subcontractor on any builder's risk policy provided by others, the Subcontractor shall bear the deductible cost.

(g) Other.

(1) If required by the Contract, Subcontractor must enroll in, comply with and be accepted into the Project CCCP/OCIP (or similar) Program and provide the CCIP/OCIP (or similar) credit required by the Program.

(2) To the fullest extent permitted by law, the insurance afforded to the additional insured(s) shall be as broad as the insurance afforded to the first named insured. In the event any party provides insurance with limits greater than those required in this Section, the insurance afforded to an additional insured shall be up to the full limits provided by such policy, and this Agreement shall be deemed to require such full limits.

(3) When applicable or if the scope of work contains or involves design work, or creating, engineering, stamping, signing, or sealing drawings, or professional services of any nature, Subcontractor/shall provide Professional Liability coverage, including coverage for contractual liability required by the Subcontract, coverage for any claim arising out of professional services rendered under the Subcontract, and shall not be cancelled, non-renewed or materially altered without 30 days prior notice to Contractor. Limits shall be no less than \$1,000,000 per claim, \$2,000,000 Aggregate.

(h) Liability Limits. The liability limits may be met with any combination of primary, excess, or umbrella insurance policies.

(i) Endorsements. The policies of liability insurance to be maintained by Subcontractor shall be written or endorsed to include the following:

(1) With respect to workers' compensation/employer's liability insurance, to provide that the insurer shall (i) waive for the benefit of Owner and PSS, and where permitted by Applicable Law, all rights of subrogation against Owner and PSS, their subsidiaries and affiliates, and their respective directors, officers, members, managers, employees, and/or agents and (ii) provide Owner and PSS with an Alternate Employer endorsement naming Owner and PSS as Alternate Employers.

(2) With respect to general liability, automobile liability, and excess/umbrella insurance, to provide that such insurance shall waive any and all rights of subrogation or recovery which the insurer may have or acquire against Owner and PSS, their subsidiaries and affiliates, and their respective directors, officers, members, managers, employees, and/or agents.

(3) That the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Owner or PSS.

(4) To add Owner and PSS, their subsidiaries and affiliates, and their respective directors, officers, members, managers, employees, agents and/or assigns as "**Additional Insureds**" (per ISO Forms CG 20 10 and CG 20 37 or their equivalent) for their legal liability arising out of the operations of Subcontractor.

(5) With respect to any additional insured, provide that such insurance will not be invalidated by any action or inaction of each such insured and will insure each such insured regardless of any breach or violation of any warranty, declaration, or condition contained in such insurance by the primary named insured wherever coverage will apply. Additional insured status shall be maintained for the duration of the Project and Completed Operations coverage for both named insureds and additional insureds shall be maintained for ten (10) years after Substantial Completion (as defined in the Contract) or to the statute of repose, whichever is less.

(j) Waiver of Subrogation. Each party releases, assigns, and waives any and all rights of recovery against the other Party, its affiliates and subsidiaries, and its and their respective employees, successors, permitted assigns, insurers, and underwriters, because of the existence of deductible clauses in, or inadequacy of limits of, any policies of insurance maintained or required to be maintained by such Party pursuant to this Agreement in the amounts stated herein. The Parties shall, in all policies of insurance related to the Project maintained by each, include clauses providing that each underwriter shall release, assign to the other Party (and

its successors and assigns), and waive all of its rights of recovery, under subrogation or otherwise, against the other Party, its affiliates and subsidiaries, and its and their respective employees, successors, permitted assigns, insurers, and underwriters.

(k) **Subcontractor Certificates.** Prior to starting Work and thirty (30) days before renewals, Subcontractor shall furnish to PSS certificates of insurance (in all cases, excluding the declaration page) from each insurance carrier showing that the insurance required is in full force and effect and the amount of the carrier's liability thereunder. Such insurance carrier shall have an A.M. Best Insurance financial strength rating of at least "A-" or better, or equivalent, or shall be of recognized responsibility satisfactory to the Parties and shall be legally authorized to write insurance in the State of Louisiana. Certificates of insurance submitted shall be in a form and content reasonably acceptable to PSS and shall provide that PSS shall timely receive copies of any Notices to PSS or Subcontractor under such policies of any default or other act or omission by PSS, Subcontractor, or other insured parties that might invalidate, render unenforceable, or result in a lapse of such policy, in whole or in part. Certificates of each renewal of the insurance should also be delivered to PSS promptly after receipt. Upon PSS's written request, Subcontractor shall furnish to PSS copies of its insurance policies.

Subcontractor shall include the following on certificates of insurance:

CERTIFICATE HOLDER(s):

Process Service Specialists, LLC  
1219 S. Purpera Ave.  
Gonzales, LA 70737

*Certificate Holder and Owner (and any other party required by the Contract to be named as an additional insured), their subsidiaries, affiliates, and co-venturers, and their respective directors, officers, members, managers, employees, agents, and assigns are included as Additional Insured(s) by the General Liability (primary and non-contributory), Auto Liability, and Pollution Liability policies as required by written contract. A Waiver of Subrogation is provided in favor of the Additional Insured(s) by the Workers' Compensation & Employers Liability, General Liability, Auto Liability, and Pollution Liability policies as required by written contract. Certificate Holder and Owner are included as Alternate Employers by the Workers' Compensation & Employers Liability policy as required by written contract. The General Liability policy includes Cross Suits Liability in favor of Additional Insured(s). The General Liability, Automobile Liability, Workers' Compensation & Employers Liability, and Pollution Liability policies include a 30-day written Notice of Cancellation in favor of the Certificate Holder as required by written contract. The Excess Liability policies follow the form of the underlying General Liability, Automobile Liability, and Workers' Compensation & Employers Liability policies.*

(l) **Rights to Provide Insurance.** If Subcontractor fails to provide or maintain any insurance required of it hereunder, PSS shall have the right, but not the obligation, to provide or maintain any such insurance, and to deduct the cost thereof from any amounts due and payable to Subcontractor. If there are no such amounts due and payable to Subcontractor, Subcontractor shall reimburse PSS for such costs on demand. Should any of the policies required to be maintained become unavailable or be cancelled for any reason during the period of this Agreement, Subcontractor shall immediately procure replacement coverage. The failure of Subcontractor to procure such replacement coverage, which is within the reasonable control of Subcontractor (to provide continuous coverage), shall constitute a material breach under this Agreement.

(m) **No Limitation of Liability.** The insurance coverage required of Subcontractor set forth herein shall in no way affect, nor is it intended as a limitation of, Subcontractor's liability with respect to its performance of its obligations under this Agreement, including performance of the Subcontract Work except to the extent required by the Louisiana Anti-Indemnity Statute, La. R.S. 9:2780.1.

(n) **Notification.** Subcontractor and PSS shall provide Notice to the other of all incidents giving rise to an insurance claim and otherwise keep the other timely apprised of insurance claim proceedings.

(o) All lower tiers of subcontractor shall maintain insurance in the like form and amounts as required herein.

(p) Subcontractor acknowledges that the cost of providing the insurance coverages required herein has been paid by PSS as part of the Subcontract price.

**26. BONDS:** If required by PSS in the Subcontract, Subcontractor shall furnish performance and/or payment bonds covering the performance of Subcontractor's obligations under the Agreement Documents and the payment of all obligations arising under the Agreement Documents. Such bonds shall be in such form and amount as required by PSS and with such sureties as PSS may approve. The cost of any such bonds shall be included in the price set forth in the Subcontract.

27. **TAXES:** Any taxes shall be itemized separately on Subcontractor's application(s) for payment. Neither the prices nor any invoice shall include any tax for which an exemption is available, or any federal excise or other tax not required to be paid by Subcontractor. All taxes on products not itemized and disclosed in the purchase price shall be paid by Subcontractor. The compensation established in the Subcontract is inclusive of, and Subcontractor shall pay all liabilities or claims for taxes which any taxing authority claiming jurisdiction over the Subcontract Work may assess or levy against Subcontractor.

28. **LIMITATION ON DAMAGES:**

**IN NO CASE SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER FOR LOSS OF PROFIT OR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES, WHETHER IN TORT, CONTRACT OR OTHERWISE, IN CONNECTION WITH SUBCONTRACTOR'S PERFORMANCE OF THE SUBCONTRACT WORK, UNLESS SUCH LOSS OR DAMAGE IS INCLUDED IN THE INDEMNIFICATION OF THIRD-PARTY CLAIMS REQUIRED HEREIN.**

29. **ENFORCEMENT:** Should either Party retain counsel to enforce the terms of this Agreement, the Party who substantially prevails in any dispute shall have all costs and expenses arising out of or relating to such enforcement (including reasonable attorney's fees) paid by the other Party.

30. **SEVERABILITY:** If any term or condition of this Agreement, or any portion thereof, is invalid or unenforceable under any statute, regulation, ordinance, or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, or rule of law, and shall not affect the validity of any other term or condition herein or the valid portion of such term or condition.

31. **SURVIVAL:** Notwithstanding anything herein to the contrary, Subcontractor's obligations under the Agreement Documents shall survive any termination or suspension of the Subcontract Work, Final Acceptance, or PSS making final payment to Subcontractor.

32. **CONFIDENTIAL INFORMATION:** PSS and Subcontractor are willing to share Confidential Information on the following basis:

(a) **"Confidential Information"** does not have to be marked as such, and includes, but is not limited to, (i) all technical, commercial, or other information or materials that either Party may obtain from the other Party in connection with the Subcontract Work, including intellectual property rights and proprietary software and (ii) all documents and other tangible items, which contain information relating to either Party's business, including client lists, business plans, business prospects, the terms and negotiations of this Agreement, the Agreement Documents, business records, proposals, schedules, labor requirements, pricing, mark-ups, financial information, and trade secrets of any kind. Such information may be received under this Agreement to be used for the Subcontract Work. It is not to be used in any other fashion without the express written permission of the disclosing Party.

(b) Both Parties agree that only those employees, officers, directors, contractors, affiliates, and agents of the Parties (hereinafter, **"Representatives"**) who have a clear need to know of Confidential Information for the Subcontract Work shall have access to Confidential Information. Both Parties agree that the recipient shall protect the discloser's Confidential Information using the same degree of care it uses to protect its own Confidential Information of a similar nature but using no less than a reasonable degree of care. This obligation shall not apply to any information: (i) which is or lawfully becomes part of the public domain; (ii) which was in the lawful possession of the receiving Party prior to its disclosure by the disclosing Party; or (iii) which otherwise lawfully becomes available to the receiving Party from a source independent of the disclosing Party. Confidential Information may be disclosed to such other recipients as may be required by Applicable Law, a court of competent jurisdiction, or by government order, provided that the disclosing Party shall immediately notify the other Party of any such request for disclosure in sufficient time to allow it to protect its interests.

(c) The obligations herein shall be effective from the Effective Date and terminate five (5) years from the Effective Date. The obligations of confidentiality and non-use shall terminate earlier upon return of the Confidential Information to the disclosing Party, or proof of destruction of the exchanged Confidential Information, except that any Confidential Information disclosed by either Party regarding specifically identified trade secrets shall remain subject to this Agreement for so long as such Confidential Information remains a trade secret.

(d) Both Parties acknowledge that the other Party has expended considerable time, effort, and money on developing its Confidential Information. Both Parties agree that impermissible disclosure or use of such Confidential Information, whether by a Party or as a result of a Party's previous permissible disclosures, except as provided for under this Agreement, shall constitute a material breach of this Agreement and may result in irreparable damage and injury to the disclosing Party, in which event the disclosing Party shall be entitled to pursue any and all legal remedies, including but not limited to, seeking an injunction, writ, temporary restraining order, or any other available judicial remedy, without the requirement of posting security. In connection with

such an action, the receiving Party agrees to indemnify and hold the disclosing Party harmless for any damages directly or indirectly attributable to the disclosure of the Confidential Information by the receiving Party in contravention of the terms of this Agreement, including, but not limited to, reasonable attorney's fees and court costs actually and reasonably incurred by the disclosing Party. Nevertheless, both Parties also agree that in no event shall either Party be liable to the other Party for special or consequential damages or lost profits.

(e) The receiving Party shall return to the other Party all tangible Confidential Information provided hereunder, and all notes, summaries, memoranda, drawings, manuals, records, excerpts, or derivative information, and all other documents or materials (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data, or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, within thirty (30) days of the completion of the Subcontract Work or the termination of this Agreement, whichever occurs first.

**33. NON-DISCLOSURE:** Subcontractor shall not discuss or disclose any information of any kind about the Project or Subcontract Work to any reporter or news outlet, including posting information on an internet or social media website, without the written consent of PSS.

**34. EXHIBITS:** The following exhibits shall be incorporated into this Agreement:

Exhibit A: Partial Lien Waiver

Exhibit B: Final Lien Waiver

**NO TERMS OR CONDITIONS, OTHER THAN THOSE STATED ABOVE, AND NO AGREEMENT OR UNDERSTANDING IN ANY WAY MODIFYING OR WAIVING THE ABOVE, SHALL BE EFFECTIVE UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED AGENT OF PSS. COURSE OF PERFORMANCE SHALL NOT MODIFY THIS AGREEMENT.**

**EXHIBIT A**

**PARTIAL LIEN WAIVER**

The undersigned, \_\_\_\_\_ (“Subcontractor”) has, under the Master Service Agreement dated \_\_\_\_\_ (the “Agreement”) with \_\_\_\_\_ (“PSS”), furnished certain materials, equipment, services, labor, or other work related to Subcontract No. \_\_\_\_\_ for \_\_\_\_\_ (the “Project”). All capitalized terms used herein shall have the meanings set out in the Agreement.

In consideration of payment in the amount of \_\_\_\_\_ (\_\_\_\_\_ Dollars) pursuant to invoice no. \_\_\_\_\_, the receipt and sufficiency of which are hereby acknowledged, Subcontractor hereby waives and releases: (i) any and all claims for payment against PSS and Owner, (ii) any and all liens or claims or rights of lien upon the property related to the Project and the improvements, fixtures, and appurtenances thereon, for all work performed through \_\_\_\_\_ and (iii) any and all claims or rights against any labor, material, and/or payment bond; which Subcontractor has, may have had, or may have in the future relating to or arising out of the portion of the Subcontract Work completed as of \_\_\_\_\_.

Subcontractor represents and warrants that all of its obligations (legal, equitable, or otherwise), relating to or arising out of the Subcontract Work completed as of \_\_\_\_\_ under the Subcontract, have been fully satisfied and Subcontractor further represents and warrants that Subcontractor has paid in full all of its sub-subcontractors, materialmen, laborers, and employees and all applicable taxes, including sales and use taxes for all Subcontract Work performed through \_\_\_\_\_, and that there are no Claims outstanding which would entitle the holder to Claim a lien against the property related to the Project or file a Claim against any labor, material, and/or payment bond.

Subcontractor expressly agrees to indemnify, defend, and hold harmless PSS and Owner against all losses, claims, liens, damages, costs, and expenses and from any and all further claims, demands, or actions that may be brought against PSS or Owner by Subcontractor Group, or by anyone on behalf of one of the members of Subcontractor Group, for the purpose of enforcing a further claim for compensation related to or arising out of the Agreement or the portion of the Subcontract Work furnished for the Project.

IN WITNESS WHEREOF, Subcontractor has caused this Partial Lien Waiver to be executed by its duly authorized representative on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Subcontractor: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF \_\_\_\_\_  
PARISH/COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day personally appeared, \_\_\_\_\_, known or identified to me personally to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that s/he executed the same for the purposes and consideration therein expressed.  
GIVEN UNDER MY HAND AND SEAL OF OFFICE on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT B**

**FINAL LIEN WAIVER**

The undersigned, \_\_\_\_\_ (“Subcontractor”) has under the Master Service Agreement dated \_\_\_\_\_ (the “Agreement”) with \_\_\_\_\_ (“PSS”), furnished certain materials, equipment, services, labor, or other work related to Subcontract No. \_\_\_\_\_ for the \_\_\_\_\_ (the “Project”). All capitalized terms used herein shall have the meanings set out in the Agreement.

In consideration of final payment in the amount of \_\_\_\_\_ (\_\_\_\_\_ Dollars) pursuant to invoice no. \_\_\_\_\_ the receipt and sufficiency of which is hereby acknowledged, Subcontractor hereby waives and releases: (i) any and all claims for payment against PSS and Owner with respect to all Subcontract Work performed under the Subcontract or for the Project, (ii) any and all liens or claims or rights of lien upon the property related to the Project and the improvements, fixtures, and appurtenances thereon with respect to all Subcontract Work performed under the Subcontract or for the Project, and (iii) any and all claims or rights against any labor, material, and/or payment bond; which Subcontractor has, may have had, or may have in the future relating to or arising out of the Subcontract Work, the Subcontract, and/or the Project.

Subcontractor represents and warrants that all of its obligations (legal, equitable, or otherwise), relating to or arising out of the Subcontract Work and the Agreement, have been fully satisfied, except for Subcontract Work and/or obligations that survive the termination or expiration of the Agreement, including warranties and correction of defective Subcontract Work. Subcontractor further represents and warrants that Subcontractor has paid in full all of its sub-subcontractors, materialmen, laborers, and employees and all applicable taxes, including sales and use taxes, and that there are no Claims outstanding which would entitle the holder to claim a lien against the property related to the Project or file a Claim against any labor, material, and/or payment bond.

Subcontractor expressly agrees to indemnify, defend, and hold harmless PSS and Owner against all losses, claims, liens, damages, costs, and expenses and from any and all further claims, demands, or actions that may be brought against PSS or Owner by Subcontractor Group, or by anyone on behalf of one of the members of Subcontractor Group, for the purpose of enforcing a further claim for compensation related to or arising out of the Agreement or the Subcontract Work furnished for the Project.

IN WITNESS WHEREOF, Subcontractor has caused this Final Lien Waiver to be executed by its duly authorized representative on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Subcontractor: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE STATE OF \_\_\_\_\_  
PARISH/COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day personally appeared, \_\_\_\_\_, known or identified to me personally to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that s/he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(SEAL)