



Revised February 14, 2018

SUBCONTRACT TERMS AND CONDITIONS

These Subcontract Terms and Conditions (the “Terms”) form part of a legally binding Subcontract Agreement between the NRC entity listed in the Subcontract Agreement (“NRC”), and the individual or legal entity identified as the “Subcontractor” in the Subcontract Agreement. These Terms, and the Subcontract Agreement generally, govern Subcontractor’s provision of services to or on behalf of NRC. Any term not defined in these Terms shall have the meaning set forth in the Main Terms of or Exhibits to the Subcontract Agreement.

- 1) **Scope of Work.** Subcontractor agrees to complete the work, and provide the deliverables, described or reasonably implied in the Scope of Work, including, at its own cost and expense, providing all labor and services and furnishing all supervision, materials, supplies, facilities, and equipment necessary to accomplish the work (collectively, the “Work”) within the time specified and in strict accordance with the terms, conditions and provisions of the Contract Documents (as defined in Section 2). The Scope of Work is set forth in Exhibit A to the Agreement. In the event of a conflict between Exhibit A, Exhibit B, Exhibit C, the Main Terms of the Agreement, and these Terms, the following order of precedence shall apply: (a) the Main Terms of the Agreement; (b) these Terms; (c) Exhibit B; (d) Exhibit A; and, if present, (e) Exhibit C.
- 2) **Prime Contract.** Subcontractor acknowledges that Subcontractor has received a copy of the Prime Contract and associated documents, including, as applicable, the form of contract, bonds, drawings, plans, specifications, general conditions, special conditions, amendments, supplements, addenda, Owner’s health and safety manual or regulations (if any) and any safety data sheets that NRC has obtained from Owner, progress schedules, and all other contract documents as defined in the Prime Contract (together the “Contract Documents”). Subcontractor shall act in accordance with the Contract Documents as and to the extent they apply to the Work. Subcontractor shall take no action, or make any omission, that causes NRC, whether directly or indirectly, to be wholly or partly in breach of the Prime Contract, or otherwise fail in whole or in part to comply with the Contract Documents. NRC shall have all rights, remedies, and redress against Subcontractor that Owner, under the Prime Contract, has against NRC to extent those rights, remedies, or redress are applicable to Subcontractor or the Work.
- 3) **Subcontractor Performance & Investigation.** Subcontractor agrees to perform the Work in strict accordance with the Contract Documents based upon Subcontractor’s own investigation and research and not upon any estimate, opinions, representations or other information received from NRC, Owner or any other person. Based on Subcontractor’s independent investigation of all aspects of the Work and Work site, Subcontractor agrees and acknowledges that the payment for the Work is just and reasonable compensation for all Work to be performed by Subcontractor pursuant to this Agreement.
- 4) **Independent Contractor.** Subcontractor, its employees, agents and sub-subcontractors shall act as and be deemed to be independent contractors and shall not be deemed to be agents, assigns, employees, joint venturers, partners or principals of NRC, its employees, agents, representatives, partners, officers, directors and shareholders, and the employees, means, methods, materials, equipment and facilities used by Subcontractor, its sub-subcontractors and suppliers to perform the Work hereunder shall at all times be under Subcontractor’s exclusive supervision, direction and control.
- 5) **WBE/MBE/DBE/VBE Status.** If Subcontractor has been awarded the Work because it holds status as a minority, women-owned, veteran-owned or disadvantaged business enterprise as defined under Applicable Law, and such status is revoked, terminated or otherwise not maintained throughout the duration of the Work, then NRC shall have the absolute right to terminate this Agreement at its sole option in accordance with the termination for cause provision in Section 28.
- 6) **Compensation.** NRC agrees to pay and Subcontractor agrees to accept, as full compensation, including taxes if applicable, for all work done and materials furnished and for all costs and expenses incurred and loss or damages sustained by reasons of the action of the elements or growing out of the nature of work, or for any unforeseen conditions, obstructions or difficulty encountered in the prosecution of the Work, and for all expenses incurred by, or in consequence of, the suspension or discontinuance of the Work as herein specified, and for faithfully completing the Work and for maintaining the Work in good condition until the final payment is made, the total consideration indicated in Exhibit A (the “Subcontract Amount”).
- 7) **Payment Terms.** Subcontractor invoices shall be rendered upon completion of the Work or, where progress payments are included in the Subcontract Amount, by the 15th day of each month for Work completed for the previous month. Invoices for progress payments shall not be submitted more frequently than once a month. NRC shall make payment to Subcontractor for each of Subcontractor’s invoices within thirty (30) days after receipt of payment for



Subcontractor's Work by NRC from Owner. To the extent allowable by Applicable Law, NRC's receipt of payment from Owner for Subcontractor's Work shall in every instance be an express condition precedent to the right of Subcontractor to receive payment from NRC, and if NRC does not receive payment from Owner then NRC shall have no obligation to pay Subcontractor. To the extent allowable by Applicable Law, Subcontractor may not impose any minimum billing charges, late payment charges, or interest charges on NRC. Subcontractor agrees to accept the same amount of retainage as required by the Contract Documents between NRC and Owner. To the extent allowable by Applicable Law, retainage in the amount specified on the Agreement, agreed to in the Contract Documents, will not be payable unless and until NRC is paid by Owner for such retainage

8) **Invoicing. Invoices are to be submitted to ap@nrcc.com for lump sum payments, progress payments and final payments. All invoices must reference the job number listed on the Main Terms of the Agreement.**

To the extent allowable by Applicable Law, Subcontractor waives its right to receive payment for any Work for which Subcontractor fails to submit an invoice to **ap@nrcc.com** within sixty (60) days of completion of the Work included in the invoice. Invoices sent by mail, fax or to any email address other than **ap@nrcc.com** will not be deemed received by NRC until resent to **ap@nrcc.com**. Any invoice that is not submitted in accordance with these Terms shall be deemed rejected by NRC. The Work shall be delivered free from all claims, liens, and charges whatsoever. Subcontractor agrees that it will duly execute and deliver to NRC for the benefit of NRC and Owner a waiver and release of all liens and claims of any kind against the Project, Owner and NRC, in such form as Owner requires, to the extent Subcontractor has been paid or is about to be paid for any part of the Work hereunder, and such waiver and release may be required as a condition to the right to receive payment hereunder. A lien waiver must accompany each invoice and must reflect the dollar amount of that invoice. Subcontractor agrees to insert an identical requirement in any subcontract it may enter into with sub-subcontractors or materialmen as permitted herein. Subcontractor agrees to deliver to NRC for the benefit of NRC and Owner waivers and releases of all liens from all sub-subcontractors. Such waivers and releases are required, in addition to a completed W-9 and proof of insurance, as conditions precedent to the right to receive payment hereunder.

9) **Liens.** Subcontractor, for itself and its sub-subcontractors, vendors, materialmen or suppliers at any tier, agrees to maintain Owner's real property, personal property or equipment free of liens, claims of liens, suits, encumbrances and stop notices ("**Liens**"), to the fullest extent allowable by Applicable Law, and in the event Subcontractor fails to do so, it shall be responsible for any costs of liabilities arising from any such Liens, including attorneys' fees and costs incurred by NRC in connection with such Liens. Upon Owner's or NRC's request, Subcontractor shall immediately obtain, without additional cost to Owner or NRC, a bond satisfactory to Owner to indemnify Owner against any such Liens and charges. In the event that Subcontractor fails to obtain a discharge of any Liens within seven (7) calendar days of receiving notice of such Liens, NRC shall have the right to the extent allowable by Applicable Law, but not the obligation, to pay the lien claimant the amount sought and deduct such amount from any amounts due to Subcontractor; in such event, the amount claimed by the Liens claimant that NRC pays in good faith shall conclusively establish as between NRC and Subcontractor the amount due to the lien claimant and Subcontractor expressly waives any right to challenge the validity or amount of the claim as between NRC and Subcontractor. Notwithstanding the foregoing, nothing contained herein shall be construed to limit NRC's rights if greater rights are available under Applicable Law.

10) **Schedule.** Time is of the essence with regard to this Agreement. The Work shall be performed and completed by the Subcontractor according to the Project Schedule listed on the Subcontract Agreement, which NRC and Owner have the right to adjust in their sole discretion.

11) **Insurance.** Subcontractor agrees to carry, at its own expense, the insurance shown on the attached Exhibit C and otherwise comply with the terms of Exhibit C. Upon demand by NRC, Subcontractor agrees to furnish certified copies of any applicable insurance policies to NRC within a reasonable period of time. Compliance by Subcontractor with the requirements of Exhibit C shall not relieve Subcontractor from liability under any provision of this Agreement.

12) **Indemnity.** Subcontractor shall defend, indemnify and hold harmless Owner, NRC, their affiliates, and consultants, employees, agents, representatives, partners, officers, directors and shareholders of any of them (individually or collectively, "**Indemnitee**") from and against all claims, demands, damages, causes of action, liabilities, costs and expenses, including penalties, fines, forfeitures, costs of defense, settlement and attorneys' fees (including costs for time expended by in-house counsel, which shall be calculated at the prevailing market for attorneys of similar experience practicing in the jurisdiction), and consequential, incidental and special damages, arising out of or in any way connected with the performance or lack of performance of the Work under this Agreement or any change orders or additions to the Work included in this Agreement, provided that any such claim, demand, damage, cause of action, liability, cost, or expense is attributable to:

- a) bodily injury, sickness, disease or death, or destruction of or damage to any property including loss of use of that property, and caused in whole or in part by any actual or alleged: act or omission of the Subcontractor

or anyone directly or indirectly retained or engaged by it or anyone for whose acts it may be liable; or violation of any statutory duty, regulation, ordinance, rule or obligation by Subcontractor or by an Indemnitee provided that the violation arises out of or is in any way connected with the Subcontractor's performance or lack of performance of the Work under this Agreement; or

b) NRC's violation of its obligations under the Prime Contract or NRC's obligation to indemnify Owner under the Prime Contract, to the extent either of the foregoing arises due to Subcontractor's acts or omissions in connection with this Agreement.

To the fullest extent permitted by Applicable Law, Subcontractor's obligations under this Agreement shall apply regardless of whether or not any such claim, demand, damage, cause of action, liability, cost, or expense is or may be attributable to the fault or negligence of the Subcontractor, and whether or not such claim, demand, damage, cause of action, liability, cost, or expense is alleged to have been caused in part by NRC. In the event that an Indemnitee is determined to be any percent negligent pursuant to any verdict or judgment, Subcontractor's obligation to indemnify the Indemnitee for any amount, payment, judgment, settlement, mediation or arbitration award shall extend to the percentage of negligence of the Subcontractor and anyone directly or indirectly engaged or retained by it and anyone else for whose acts the Subcontractor is liable. In any and all claims, demands, and causes of action against an Indemnitee by any employee of the Subcontractor or anyone directly or indirectly retained or engaged by it or anyone for whose acts it may be liable, the obligations under this Agreement shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The obligations under this Agreement shall not be limited in any way by the amount or type of insurance required to be provided to or for the benefit of an Indemnitee as described in Exhibit B of this Agreement. The obligations under this Agreement shall not be construed to negate, abridge or reduce any other right or obligation that would otherwise exist as to any person or entity described in this Agreement. The obligations under this Agreement shall not be construed as requiring Subcontractor to indemnify NRC for any loss or damage arising solely as the result of NRC's intentional misconduct or negligence. In addition to and without limiting any rights of NRC as provided for in this Section or elsewhere in this agreement, Subcontractor shall indemnify and hold harmless NRC from any liquidated damages which may be asserted against it by Owner as a result of Subcontractor's acts or omissions arising out of the performance of the Work.

13) **Bonding:** If the initial value of this Agreement exceeds a value of \$250,000, Subcontractor will provide a performance and payment bond in the Subcontract Amount in a form and by a surety satisfactory to NRC, unless this requirement is waived in writing by NRC and NRC's Surety.

14) **Changes.** NRC may make changes to the Work, and the Subcontract Amount and Project Schedule shall be equitably adjusted provided that Subcontractor provides written notice of the necessity for such adjustment as a direct result of the change with ten (10) days of receipt of a request for change or the occurrence of any event giving rise to a change; if Subcontractor does not provide such notice, the claim for adjustment is waived. No change or modification shall be binding upon NRC unless authorized in writing by NRC. Pending agreement of change order, Subcontractor shall diligently perform the changed Work as ordered.

15) **Claims for Delay.** Subcontractor shall not be entitled to make a claim and shall not make a claim for damages for delay in the performance of its Work occasioned by any act or failure to act of NRC or on account of any adjustment in Subcontractor's schedule or the Project Schedule more generally. Subcontractor's sole remedy for any delay shall be a claim for an extension of time to its period of contract performance, and only to the extent that NRC receives such an extension from Owner.

If Subcontractor is delayed in the performance of its Work by extraordinary weather conditions or any labor strikes, riots, war, acts of god, or government authorities for reasons other than any act or omission of Subcontractor, Subcontractor may claim an extension of time to complete performance of its Work as provided for herein to the extent that NRC receives such an extension from Owner. Any such request for an extension of time shall be made in accordance with the following paragraph.

If Subcontractor believes that any order, directive, condition or circumstance, other than as provided for in this Agreement relating to claims for delay, entitles Subcontractor to an extension of time, Subcontractor shall give to NRC written notice of claim not later than three (3) business days after the occurrence or discovery of the event, condition or circumstance giving rise to the claim and shall, as soon as practicable, furnish sufficient facts in support of Subcontractor's position as may be necessary for a decision. Any claim by Subcontractor for extra time not so made shall be waived and Subcontractor shall not be entitled to any extension of time as a result thereof.

Subcontractor shall be liable to NRC for all liquidated damages or other payments which NRC is obligated to pay Owner on account of delay caused by Subcontractor ("Late Payments"). Subcontractor shall also be liable to NRC for all

other costs, expenses or damages (including attorneys' fees, penalties, and liquidated damages, including the costs for time expended by in-house counsel and other experts) incurred by NRC as a result of a delay by Subcontractor in the performance of its Work herein.

16) **Disputed Work.** If any dispute shall arise between NRC and Subcontractor regarding performance of, or any alleged change in, the Work ordered by NRC, Subcontractor shall timely perform the disputed Work upon receipt of a written order and shall give written notice of a claim for additional compensation for the Work prior to commencement of the disputed Work. Subcontractor's failure to give written notice prior to commencement constitutes an agreement by Subcontractor that it will receive no extra compensation for the disputed Work. If Subcontractor refuses to proceed with the disputed Work within three (3) days upon receipt of a written order from NRC, Subcontractor shall be deemed in default and NRC may, without prejudice to any other remedy it may have, terminate this Agreement for cause upon seven (7) days written notice to Subcontractor and finish the Work, both disputed and undisputed, by whatever method it may deem expedient or necessary. The cost of completing the unfinished part of the Subcontractor's Work shall be charged to, and payable by, the Subcontractor.

17) **Labor Harmony.** The Subcontractor is to employ persons on or relating to the Work who will at all times work in harmony so as to avoid conflict, delay, or interference with the persons employed by NRC and other subcontractors on the job. Should NRC's or the Subcontractor's Work for any reason be stopped or materially delayed in the judgment of NRC due to the Subcontractor's not having proper workers, mechanics, equipment or materials to do the Work on the job, then NRC shall have the right, after three (3) business days' written notice, to terminate this Agreement without prejudice to any other remedy it may have and employ such workers as NRC may determine to complete the Work. The cost of completing the unfinished part of the Subcontractor's Work shall be charged to, and payable by, the Subcontractor.

18) **Materials and Warranty.** Subcontractor warrants that all the materials and equipment furnished will be of good quality and new unless otherwise specified, that the Work will be free from defects not inherent in the quality required or permitted, that the Work will be performed in a workmanlike manner, and that the Work will conform to the requirements of the Contract Documents and all Applicable Law. In addition to any and all other remedies available to NRC, Subcontractor shall repair or replace any defective Work, at its own cost, for one year after completion of its Work.

19) **Compliance with Laws.** Subcontractor shall comply with all federal, state and local laws, rules, codes, ordinances, standards, statutes, executive orders, and regulations, all as may be amended from time to time, applicable at the time this Agreement is executed and as may thereafter become applicable ("Applicable Law"). If Subcontractor fails to comply with its obligations under this provision, Subcontractor shall be deemed in default and NRC may, without prejudice to any other remedy it may have, terminate this Agreement on seven (7) days' written notice.

20) **Compliance with Employment Laws.** Without limiting its obligations under Section 19, Subcontractor shall comply with all Applicable Law related to employment and labor, the Affordable Care Act, the Immigration Reform and Control Act of 1986, the Immigration and Nationality Act, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

21) **Safety.** Subcontractor shall take all reasonable safety precautions with respect to performance under this Agreement and shall comply with safety measures initiated by NRC, Owner and under Applicable Law, including lawful orders of public authority for the safety of persons during the performance of the Work. Subcontractor agrees to attend scheduled morning safety briefing as required by NRC. Subcontractor further agrees to attend a Subcontractors meeting at least once weekly at the project location or another location as specified by NRC. The location and protection of existing utilities is the responsibility of Subcontractor.

22) **Licenses/Permits.** Subcontractor represents and warrants that it is properly licensed and registered, has obtained the necessary permits and has the requisite skills and experience to provide the Work. Subcontractor shall provide the requested Work in a professional and workmanlike manner exercising the same degree of skill and care ordinarily exercised by reputable members of Subcontractor's profession.

23) **Assignment.** NRC may assign this Agreement or any right or obligation of this Agreement without Subcontractor's consent. Subcontractor may not assign or subcontract this Agreement or any right or obligation of this Agreement, by operation of law or otherwise, without prior written consent of NRC. If NRC approves a sub-subcontractor of Subcontractor: (i) Subcontractor shall enter into an agreement in which Subcontractor and sub-subcontractor assume towards each other all the rights and obligations which NRC and Subcontractor assume towards each other by virtue of this Agreement; (ii) Subcontractor shall be fully liable and responsible for the acts and omissions of the sub-subcontractor to the same extent as if Subcontractor had taken the actions or made the omissions; and (iii) Subcontractor shall oversee and monitor the activities of the sub-subcontractor on an ongoing basis. Any assignment in violation of this section will be null and void.

24) **Dangerous/Hazardous Work.** Subcontractor recognizes and acknowledges that the Work to be performed under this Agreement may be dangerous or hazardous in nature and may involve exposure to and the handling of flammable, volatile or otherwise hazardous substances, wastes, or materials. Subcontractor and its employees and agents agree to exercise appropriate care and caution and hereby assume all risks of injury or other losses, including those risks of injury or other losses resulting from the Work or from any action or occurrence during the performance of the Work that causes or threatens a release of hazardous substances, waste or materials. Without limiting its obligations under Section 19, Subcontractor agrees to comply with all Applicable Law related to health, safety, security and the environment, including the Fair Labor Standards Act, the Occupational Safety and Health Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Hazardous Materials Transportation Act, the Merchant Marine Act of 1920, the Longshore and Harbor Workers' Compensation Act, and the Defense Base Act. Subcontractor will further comply with the most stringent applicable industry standards concerning the preservation of life, health, and safety of persons and property in the performance of the Work. Subcontractor will perform the Work in accordance with Owner's health and safety manual or policies as provided by NRC and as Subcontractor may otherwise become aware. Subcontractor must notify NRC within 18 hours of the occurrence of a reportable event under these Applicable Laws, standards, manuals, and policies. Failure to comply with the requirements of this clause is a material breach of the Agreement. Subcontractor must preserve, during the pendency of this Agreement and for a period of not less than 10 years after completion of the Work, all non-identical copies of records and documents (including in electronic form and all data generated during the performance of the Work) in Subcontractor's possession or control which relate in any way to the performance of the Work, irrespective of any document retention policy to the contrary. Failure to comply with all Applicable Laws, standards, manuals, and policies, is cause for work stoppage, termination of personnel from the Work or suspension of Subcontractor from the Work. Repeated or willful violations are cause for immediate termination of the Agreement for cause pursuant to Section 28.

25) **Prevailing Wage.** If the Contract Documents require NRC to pay prevailing wage rates to its employees, Subcontractor will be obligated to do the same. Subcontractor agrees to make all such payments in such amounts and at such times as required.

In addition, Subcontractor agrees to submit to NRC a verified statement, in a form acceptable to NRC, enclosed under separate cover with this agreement, attesting to their understanding that the prevailing wage rates must be paid. If applicable, NRC agrees to furnish a copy of the prevailing wage schedule prior to the start of the Work.

If the Main Terms indicate that Prevailing Wages/Certified Payroll is required, Subcontractor also agrees to submit certified payrolls, for the Work performed, on a weekly basis. No payment shall be made to Subcontractor until all required certified payrolls are submitted to NRC.

26) **Cleanliness.** At all times during the performance of the Work, Subcontractor shall maintain the site in a clean, safe and orderly condition. Subcontractor is responsible for daily and continuous clean-up and cartage of debris relating to its Work, at its own expense. Subcontractor shall complete and maintain full records of the chain of custody and control of all hazardous substances, waste, and materials loaded, transported or disposed of, including shipping manifests, other transportation documentation, and certificates of disposal or destruction, and shall provide NRC a copy of those records to ensure a complete chain of custody record for the transport of hazardous waste or hazardous materials. Upon completion of Work under this Subcontract, Subcontractor shall remove, or contract with NRC to remove, from the site all hazardous materials, temporary structures, debris and waste incidental to its operation and clean all surfaces, fixtures, equipment, etc. relative to the performance of this Agreement.

27) **Records.** Subcontractor shall maintain daily work sheets which document all labor, materials, equipment, facilities and supervision utilized by Subcontractor (or any approved sub-subcontractor thereof) in performing the Work. Subcontractor shall maintain a complete set of records pertaining to its performance of the Work under this Agreement for a period of not less than six (6) years after completion of the Work or such longer period as may be required by Applicable Law. Upon reasonable notice, NRC may audit, at Subcontractor's expense, all such records as well as inspect Subcontractor's facilities at any time during the term of this Agreement or during the three-year period after completion of the Work. If such an audit identifies overcharges of any nature by the Subcontractor in excess of five percent (5%), the Subcontractor shall reimburse NRC for the total costs of the audit. Any overcharges discovered by such an audit shall be made within 30 days of transmittal of the audit findings by NRC to Subcontractor.

28) **Termination.** NRC may terminate all or any part of the Work with or without cause by written notice to Subcontractor. If termination is for convenience, Subcontractor shall be compensated for Work performed to the date of termination. If termination is for cause, Subcontractor shall be compensated only for those portions of the Work acceptable to NRC or Owner (to be determined at NRC or Owner's sole discretion), and the cost of completing the unfinished part of the Subcontractor's Work shall be charged to, and payable by, the Subcontractor. To the extent allowable



by Applicable Law, compensation to Subcontractor by NRC in the event of termination (with or without cause) shall be only to the extent that NRC has been compensated by Owner for the Work performed by Subcontractor. Upon termination and unless directed otherwise by NRC, Subcontractor shall promptly deliver to NRC all Work whether completed or in process and all information and materials previously received by Subcontractor from NRC.

29) **Non-Solicitation of Employees.** To the extent permitted by Applicable Law, during the term of this Agreement and for two (2) years after any termination of this Agreement, Subcontractor will not, without the prior written consent of NRC, solicit, divert, hire, retain (including as a consultant) or encourage any employee or contractor of NRC to leave the employment of NRC, or hire or retain (including as a consultant) any former employee of NRC who had left the employment of NRC within two (2) years of Subcontractor's hiring or retention. It is acknowledged by Subcontractor that Subcontractor's violation of this Section will cause NRC to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain. With respect to Subcontractor's violation of this Section, Subcontractor agrees that liquidated damages represent a fair, reasonable and appropriate estimate thereof, and in lieu of actual damages for violations of this Section, Subcontractor agrees that it will be liable for liquidated damages, and not as a penalty, in the amount of two hundred percent (200%) of the annual salary (or annual salary-equivalent for any hourly employees) of the affected NRC employee for each breach. In addition to liquidated damages, Subcontractor will reimburse NRC for all legal costs incurred in enforcing this provision, including attorney's fees. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court for violations hereof.

30) **Non-Solicitation of Clients.** To the extent permitted by Applicable Law, during the term of this Agreement and for two (2) years after any termination of this Agreement, Subcontractor will not solicit business from or induce, influence or encourage, any client, customer, supplier or other similar third party of NRC that became known to the Subcontractor directly or indirectly pursuant to their performance of the Work to alter, terminate or breach its contractual or other business relationship with NRC. It is acknowledged by Subcontractor that any violation of the provisions of this Section may cause irreparable damage or injury to NRC, the exact amount of which may be impossible to ascertain. For such reason, in addition to any other remedies available and notwithstanding Section 42, NRC is entitled to proceed immediately to court in order to obtain, and Subcontractor will consent to, interim, interlocutory, and final injunctive relief restraining Subcontractor from breaching, and requiring Subcontractor to comply with, its obligations under this Section without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made. Subcontractor acknowledges the importance to NRC of Subcontractor's strict compliance with the terms of this Section and acknowledges that NRC's interest in the strict enforcement of this Section will outweigh the balance of convenience or harm that Subcontractor may suffer as a result of the strict enforcement of this Section. In addition, Subcontractor will reimburse NRC for all legal costs incurred in enforcing this provision, including attorney's fees.

31) **Ownership of Technical Materials.** All drawings, specifications, reports, summaries and other technical information developed pursuant to this Agreement shall be the property of NRC or Owner. Upon completion of the Work, or at any time upon request of NRC, Subcontractor shall deliver all such documents to NRC but may retain one copy for its records.

32) **Confidentiality.** All information furnished to Subcontractor by NRC or developed by Subcontractor in the course of performing the Work under this Agreement, whether or not it is marked "Proprietary" or "Confidential", shall be deemed to be the proprietary business information of NRC or Owner ("Confidential Information"). Except as necessary to perform its obligations and exercise its rights hereunder, Subcontractor shall not disclose the Confidential Information, directly or indirectly, to any third party other nor use such Confidential Information for any purpose. Subcontractor may not use NRC or Owner's name for promotional or other purposes without NRC's prior written consent.

33) **Severability; Reformation.** If any part of this Agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable. The parties hereby acknowledge their mutual intent that if any court or arbitrator determines that any covenant or obligation of this agreement is excessive in duration or scope, unreasonable, or unenforceable under the laws or public policy of that state, that the court or arbitrator should modify or amend that covenant or obligation to render it enforceable to the maximum extent permitted under the laws of that state.

34) **Law and Jurisdiction.** This Agreement and the rights and obligations of the parties shall be governed by the laws of the Commonwealth of Massachusetts, without regard to its laws governing conflict and choice of laws. Where not prohibited by Section 42's mandatory arbitration requirement, any suit, action or proceeding brought by any party shall be commenced exclusively in the state or federal courts located in the appropriate state or commonwealth specified in the chart at the end of this Agreement, based on the state or commonwealth in which the Work is performed, and each party submits to the jurisdiction of such court. If the Work includes transportation or disposal of wastes, then the Work shall be deemed to be performed in the state or commonwealth in which the project site from which the wastes originate is

located. However, these forum selection and choice of law provisions shall not apply to the extent that they prevent NRC from commencing legal action in another jurisdiction to the extent necessary to file, secure or otherwise enforce a mechanic's lien, other equitable relief or payment rights guaranteed by the laws or regulations of another jurisdiction.

35) **Entire Agreement.** This Agreement, including these Terms, the Main Agreement, the attached Exhibits, and the Prime Contract constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and shall supersede all prior negotiations, understandings and writings whether oral or written between the parties relating to the subject matter of this Agreement. There are no oral agreements in connection with this Agreement, and neither party is relying on any oral representations as a basis for entering into this Agreement.

36) **Counterparts/Electronic Signature.** This Agreement may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document. Signatures delivered by email in PDF format or facsimile shall be effective.

37) **Survival.** Those provisions of this Agreement that by their nature are intended to survive termination of this Agreement shall so survive.

38) **Drafting.** This Agreement shall be deemed drafted equally by both parties. Any presumption or principle that the language is to be construed against any party shall not apply. Any references to paragraphs, subparagraphs, sections or subsections are to those parts of this Agreement, unless the context clearly indicates to the contrary. The section headings contained in this agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. Also, unless the context clearly indicates to the contrary:

- a) the plural includes the singular and the singular includes the plural;
- b) or is used both conjunctively and disjunctively;
- c) any, all, each, or every means any and all, and each and every;
- d) includes and including are each without limitation;
- e) any reference to a party's "discretion" means "its sole and absolute discretion, for any reason, and considering only its own interests and not the effect of its decision on the other party";
- f) herein, hereof, hereunder and other similar compounds of the word here refer to the entire Agreement and not to any particular paragraph, subparagraph, section or subsection; and
- g) all pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the entities or persons referred to may require.

39) **Non-Waiver.** Any failure on the part of NRC to enforce any particular provision of this Agreement shall not under any circumstances constitute or be deemed a waiver thereof, or a waiver with respect to any subsequent non-compliance or non-performance of such provision. Likewise, waiver of any particular provision of this Agreement in one instance shall not be deemed a waiver with respect to any subsequent non-compliance or non-performance of such provision.

40) **Notice.** Any notice required to be given under this Agreement shall be in writing and delivered by a nationally recognized overnight mail or delivery courier service, or by fax or email with written confirmation. In the event of no specifically designated authorized representatives, the signatories to this Agreement shall be authorized representatives.

41) **Subcontractor Notice of Claims to NRC.** If the Subcontractor makes a claim for any damages alleged to have been sustained by breach of contract or otherwise, Subcontractor shall, within the earlier of (i) three (3) days after occurrence of the alleged breach or (ii) three (3) days after any part of the alleged damages have begun to be sustained, file with NRC a written notice of the details of the alleged breach and the details and amount of the alleged damages. This required statement is a material term of this Agreement. Unless the statement is made and filed as required, Subcontractor's claim for damages shall be deemed waived, invalid and unenforceable, and Subcontractor shall not be entitled to any compensation for any such alleged damages.

42) **Dispute Resolution.** Except for claims for injunctive relief or as otherwise expressly provided in this Agreement, claims, counterclaims, disputes, and other matters in question between the Subcontractor and NRC arising out of, or relating to, this Agreement or the breach of it (each a "Dispute") shall be resolved as follows:

- a) **Mandatory Mediation.** Disputes shall be subject to mediation as a condition precedent to binding dispute resolution. The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this paragraph, the parties may nonetheless proceed to the



selection of the arbitrator(s) and agree upon a schedule for later proceedings. The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the appropriate state or commonwealth specified in the chart at the end of this Agreement, based on the state or commonwealth in which the Work is performed (with location for Work involving transportation or disposal of wastes determined in accordance with Section 34), unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

b) **Mandatory Binding Arbitration.** Any Dispute not resolved by mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded. A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations or applicable restriction in this Agreement, whichever is shorter. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction thereof. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under Applicable Law in any court having jurisdiction thereof. The arbitration shall be held in the appropriate state or commonwealth specified in the chart at the end of this Agreement, based on the state or commonwealth in which the Work is performed (with location for Work involving transportation or disposal of wastes determined in accordance with Section 34), unless another location is mutually agreed upon.

c) However, Sections 42(a) and (b) shall not apply to the extent that they prevent NRC from commencing legal action in another jurisdiction to the extent necessary to file, secure or otherwise enforce a mechanic’s lien, other equitable relief or payment rights guaranteed by the laws or regulations of another jurisdiction.

43) **Differing Site Conditions.** To the extent that NRC receives such adjustments from Owner, Subcontractor is entitled to equitable adjustments in the compensation and schedule of Work in the event Subcontractor encounters physical, structural, utilities, subsurface, soil or other conditions at the Site differing from those indicated by NRC or Owner, contained in documents provided to Subcontractor for pricing purposes or revealed from a visual site inspection. In that event, the parties will agree in writing upon an appropriate amendment or change order to this Agreement to reflect the cost and schedule impact of such conditions. Any equitable adjustment to compensation shall take into account the pricing in Exhibit A.

Venue and Jurisdiction Chart

State of Performance	Venue for Exclusive Jurisdiction & Arbitration
Alaska	Anchorage, AK
California	In the CA county where NRC office providing the services is located
Connecticut	Norfolk County, MA
Maine	Norfolk County, MA
Massachusetts	Norfolk County, MA
New Hampshire	Norfolk County, MA
New Jersey	Norfolk County, MA
New York	In the NY county where NRC office providing the services is located
Oregon	In the OR county where NRC office providing the services is located
Rhode Island	Norfolk County, MA
Texas	Tarrant County, TX
Vermont	Norfolk County, MA
Washington	In the WA county where NRC office providing the services is located
All other states	Norfolk County, MA