

MASTER AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

This agreement made as of today, _____ by and between Contractor, **E.T. Technologies, Inc.** hereinafter called **Contractor**, and the Subcontractor, _____, hereinafter called **Subcontractor**, concerning any project to be completed during the calendar year of _____

IN WITNESS WHEREOF, the Contractor and Subcontractor agree as follows:

- 1. Scope of Subcontract Work.** To the extent the terms of the Prime Contract apply to the work of Subcontractor, Contractor assumes toward Subcontractor all obligations, rights, and duties that the Owner assumes toward Contractor; and Subcontractor assumes toward Contractor all obligations, rights and duties that the Contractor assumes toward Owner and others under the Prime Contract. In the event of conflicts or inconsistencies between provisions of this agreement and the Prime Contract, this agreement shall govern. Subcontractor shall perform Subcontract work under the general direction of the Contractor, and shall cooperate with the Contractor so Contractor may fulfill obligations to Owner. Subcontractor shall provide subcontract work for the project in accordance with the progress schedule to be prepared by the Contractor after consultation with the Subcontractor, and as it may change from time to time. Subcontractor shall give timely notices to Contractor pertaining to subcontract work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing, and taxes necessary to complete the subcontract work. Subcontractor shall indemnify and hold harmless contractor therefore.
- 2. Progress and Final Payments.** Subcontractor shall promptly submit invoices at intervals as directed by Contractor. Subcontractor shall submit with any such invoice whatever affidavits, releases, waivers, and other documents relating to the Work covered by such invoice that Contractor may request. Contractor shall pay Subcontractor on or about twenty (20) days following receipt of corresponding payment from Owner. Such payment shall be limited to the amount of payment that Contractor receives from Owner for the Work, and Contractor may withhold from each payment other than final payment, retainage of either (i) 10%, or (ii) the amount pertaining to the Work withheld by Owner from Contractor. Contractor shall have no obligation to make any payment to Subcontractor unless Subcontractor, in Contractor's opinion, is in full compliance with all requirements of this Subcontract. Subcontractor shall bear the risk of nonpayment by the Owner, and payment to Subcontractor shall be wholly contingent and conditioned upon Contractor's receipt of payment from Owner, and in no event shall Contractor be responsible to make any payment to Subcontractor unless and until payment is actually received by Contractor from Owner. Subcontractor shall promptly pay for all labor and materials supplied in the prosecution of the Work. Contractor is entitled and authorized to (i) withhold from any amount otherwise owed Subcontractor the amount of any claim for payment of labor or materials allegedly furnished in the prosecution of the Work, (ii) make payment to Subcontractor and any such claimant by joint check, (iii) pay any such claimant directly from funds otherwise owed Subcontractor, and (iv) withhold from any amount otherwise owed Subcontractor an amount sufficient, in Contractor's opinion, to compensate for any breach by Subcontractor of any provision of the Subcontract. No payment shall operate as an acceptance of the Work performed or materials furnished.

3. **Payments Withheld.** Contractor may reject a Subcontractor payment application, or nullify a previously approved Subcontractor payment application, in whole or in part, as may be reasonably necessary to protect Contractor from loss or damage caused by Subcontractor's failure to (1) timely perform subcontract work; (2) properly pay Subcontractors and/or suppliers; or (3) promptly correct rejected, defective or non-conforming subcontract work.
4. **Waiver of Claims.** Final payment shall constitute a waiver of all claims by Subcontractor relating to subcontract work, but shall in no way relieve Subcontractor of liability for warranties, or for non-conforming or defective work discovered after final payment. Subcontractor agrees to perform its warranties, and to correct non-conforming or defective work discovered after final payment within a reasonable time after notification of same by Contractor, Owner, architect or engineer.
5. **Warranty of Subcontract Work.** Subcontractor guarantees and warrants all materials and workmanship and agrees to replace at his sole cost and expense, to the satisfaction of Contractor, any and all work which is defective or improperly installed, for a period of one (1) year following completion.
6. **Protection of Subcontract Work.** Subcontractor shall have the duty and obligation to protect subcontract work from damage from any cause whatsoever, including, but not limited to, fire, windstorm, rain, or the intentional or negligent act of any other contractor or subcontractor.
7. **No Damages for Delay.** Should Subcontractor be delayed by any act or omission of Contractor, engineer, or owner, or by any other cause beyond the Subcontractor's control, and if the cause of delay is not due any act or omission of Subcontractor, Subcontractor shall be entitled to request a reasonable extension of time for completion of the subcontract work. Any such request must be in writing and shall be made promptly upon discovery the reasons giving rise to the request. No payment of any kind, for compensation or for damages, or otherwise, shall be made to Subcontractor because of any such delay, even though Subcontractor's extension of time request be granted, unless Owner is obligated to pay Contractor compensation or damages because of such delay, and then as and when Owner pays such compensation or damages to Contractor, Subcontractor shall receive that share of such compensation or damages which can be agreed to or proven to have been directly attributable to such delay. The requirement that Contractor be paid by Owner prior to any payment by Contractor to Subcontractor mentioned above shall be deemed a condition precedent to any such payment by Contractor to Subcontractor.
8. **Subcontractor Inspection and Investigation.** Subcontractor agrees that it has, prior to the execution of this agreement, conducted an independent inspection and investigation of the scope of subcontract work. Subcontractor acknowledges that it has had access to all contract documents it deems necessary to make its independent investigation. Any damages to Subcontractor caused by the inadequacy of the independent inspection and investigation by Subcontractor shall be the responsibility of Subcontractor.
9. **No Mechanic's Liens.** Subcontractor shall not suffer, allow or permit a mechanic's lien to be filed in connection with the project by any subcontractor or laborer of Subcontractor, and shall indemnify and hold harmless Contractor and Owner against all liabilities for claims and liens for labor performed or materials used or furnished to be used on the project in connection with Subcontractor's performance hereunder, including, but not limited to, reasonable attorney's

fees, court costs, and litigation expenses, and all incidental or consequential damage resulting to Contractor or Owner from such claims. Further, in case suit on such claim is brought, Subcontractor shall defend such suit at his or its own expense and cost, and will pay and satisfy such liens or judgments as may be established by a decision of a court in such a lawsuit. This paragraph shall not prohibit Subcontractor from filing a valid lien in the event Subcontractor is not paid hereunder.

10. **Independent Contractors.** Subcontractor agrees that it is, and will remain throughout the life of this Subcontract, an independent contractor solely responsible for performing the details of the Work to the extent necessary to avoid any claim or assertion of an employer-employee relationship between Contractor and Subcontractor's employees, and an employing unit subject to and in compliance with all applicable tax, unemployment compensation, worker's compensation and other laws. Subcontractor shall at its expense comply with all laws, rules, ordinances, and regulations of all governing bodies having jurisdiction over the work and obtain all necessary permits and licenses. **Subcontractor Status:** Subcontractor represents and warrants that it is a (check one) _____ Corporation, _____ Partnership, _____ Sole Proprietorship. Its tax identification number is _____.

11. **Indemnification.** The work performed by the Subcontractor shall be at the risk of Subcontractor exclusively. Subcontractor shall indemnify and defend at its sole expense and hold harmless Contractor, the Owner, affiliated companies of Contractor, their partners, joint ventures, representatives, members, designees, officers, directors, shareholders, employees, agents, successors and assigns (the indemnified parties) from and against any and all claims for bodily injury, death or damage to the property, demands, damages, actions, causes of action, suits, judgments, obligations, and liabilities, costs and expenses, including, but not limited to, investigative and repair costs, attorney's fees, litigation expenses and court costs (claims) which arise or are in any way connected with the work performed by Subcontractor. These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of Subcontractor or its employees or agents, whether active or passive. Said indemnity and defense obligations shall further apply whether or not said claims arise out of the concurrent act, omission, or negligence of the indemnified parties, whether active or passive. Subcontractor shall not be obligated to indemnify and defend Contractor or Owner for claims found to be due to the willful misconduct of indemnified parties; however, such obligations do apply to the negligence of the indemnified parties. Subcontractor's indemnification and defense obligations hereunder shall extend to claims occurring after this agreement is terminated as well as while it is in force, and shall continue until adjudication is final.

12. **Insurance.** The Subcontractor, at its own expense, shall obtain and maintain in full force and effect, without interruption during the term of the Agreement, the following minimum levels of insurance:
 - A: Workers' Compensation insurance covering the legal liability and defense of the Contractor and its Subcontractors under the applicable workers' compensation or occupational disease laws for claims for personal injuries and death resulting there from to the Contractor and its Subcontractor's employees. The Subcontractor shall also obtain a minimum of \$1,000,000 of Employers' Liability insurance. Certificates of insurance must include a waiver of subrogation in favor of Contractor. Coverage must be with a licensed carrier where the work is being performed and stated on the certificate for CO & UT.

B: Commercial General Liability insurance covering the legal liability (including liability assumed contractually, whether incidental or not) and defense of the Subcontractor who may be engaged in the services, for claims for personal injuries (including death) and property damage resulting there from arising out of the services to be performed by the Subcontractor, in an amount not less than \$1,000,000 for any one occurrence, \$2,000,000 general aggregate (subject to a per project general aggregate provision), \$2,000,000 Products/Completed Operations aggregate limit. Commercial General Liability insurance shall be obtained and shall include broad form contractual liability coverage, products/completed operations, cross liability, severability of interest and broad form property damage (if required), and Contractor as well as its directors, officers, and employees shall be named as an additional insured on such Commercial General Liability policy regarding liability arising out of operations performed under this Agreement. Form CG 20 10 04 04 and CG 20 37 07 04 must be shown on the certificate of insurance or its equivalent.

C: Automobile Liability insurance covering the legal liability (including liability assumed contractually, whether incidental or not) and defense of the Subcontractor who may be engaged in the services, for claims for personal injuries and death resulting there from and for property belonging to other than the Subcontractor caused by highway licensed vehicles of or used by the Subcontractor in an amount not less than: (i) \$1,000,000 for any one person; (ii) \$1,000,000 for bodily injury for any one occurrence; and (iii) 1,000,000 for property damage for any one occurrence. Automobile Liability insurance shall provide coverage for owned, hired or non-owned automobile or other automotive equipment and Contractor shall be named as an additional insured on such policy.

D. Umbrella Liability insurance following the form all underlying coverages in an amount of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. At our discretion we may request higher limits.

E. Pollution Liability: If the contracting party engages in a business that works with or uses a material, produces a product or waste considered to be a "hazardous material or waste" under and local, state or federal law / regulation, (which includes but is not limited to: flammable explosives, radioactive materials, known carcinogenic materials, volatile chemicals and biological contaminants) they will be required to carry \$1 million in Pollution Liability insurance coverage. The policy must cover the Contractor's completed operations. This insurance must include sudden and gradual coverage for third-party liability including defense costs and completed operations. The coverage must be maintained during the term of the contract/lease and at least three (3) years following its completion / termination.

The Subcontractor's insurance coverage shall be primary and non-contributory including completed operations as respects work on this project for Contractor its directors, officers and employees. Any insurance or self-insurance maintained by Contractor shall be excess of Subcontractor's insurance. The Subcontractor, in its agreements with subcontractors, shall require subcontractors to obtain insurance meeting the minimum limits and incorporating the contractual requirements that are prescribed by this Section. The Subcontractor hereby waives and relinquishes any right of subrogation against Contractor and its agents, representatives, employees and affiliates they might possess for any policy of insurance provided under this Section or under any State and Federal Workers' Compensation or Employer's Liability Act. Subcontractor shall require its insurer to notify Contractor thirty (30) days prior to the effective date of any cancellation or material change in any of the required policies. To the extent that

the Subcontractor utilizes deductibles in conjunction with the insurance required by the Agreement, all deductible expenses will be assumed by the Subcontractor. Insurance shall be placed with insurers with a Best rating of not less than A-.

13. **Change Orders.** When Contractor orders changes in writing, Subcontractor, without nullifying this agreement, shall make any and all changes to the subcontract work which are within the general scope of this agreement. Any adjustment in the subcontract amount, or the subcontract time of performance, shall be authorized by a written change order, or not at all. No adjustments shall be made for any changes performed by a subcontractor that have not been ordered by Contractor. Any changes to the subcontract work or subcontract time for completion shall be eligible for extra charge or credit only when approved in writing by all parties hereto or their authorized agents. A change order is a written instrument prepared by Contractor and signed by Subcontractor stating their agreement upon the change in subcontract work.
14. **Assignment.** Subcontractor shall not assign the subcontract work in whole or in part without the prior written approval and consent of Contractor.
15. **Time.** Time is of the essence for both parties. The parties agree to perform their respective obligations so that the project may be completed in accordance with this agreement.
16. **Contractor's Right to Perform Subcontractor's Responsibility and Termination of Agreement.**
 - (a) **Failure of Performance.** In the event Subcontractor fails to satisfy contractual deficiencies or to commence and continue satisfactory correction of the default with diligence or promptness within five (5) working days from receipt of Contractor's written notice, then Contractor, without prejudice to any right or remedies provided at law or in equity, shall have the right to take whatever steps it deems necessary to correct deficiencies and charge the cost thereof to Subcontractor, who shall be liable for payment, including reasonable overhead, profit and attorney's fees in the event of failure of performance. In the event of an emergency affecting safety of persons or property, Contractor may proceed as above without notice, but Contractor shall give Subcontractor notice promptly after the fact as a precondition of cost recovery.
 - (b) **Termination by Owner.** In the event Owner terminates the Prime Contract or any part which includes the subcontract work, Contractor shall notify Subcontractor in writing within five (5) business days of termination and, upon written notification, this agreement shall be terminated and Subcontractor shall immediately stop subcontract work, follow all of Contractor's instructions, and mitigate all costs and damages. In the event of Owner termination, Contractor liability to Subcontractor shall be limited to the extent of Contractor recovery on Subcontractor's behalf under the Prime Contract. Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of Owner termination and to prevent Subcontractor to prosecute the claim in the name of Contractor, for the use and benefit of Subcontractor, or assign the claim to Subcontractor.
 - (c) **Termination by Contractor.** In the event Subcontractor fails to commence and satisfactorily continue correction of a default within five (5) business days after written notification issued by Contractor, then Contractor may, in lieu of or in addition to other remedies under this

agreement, issue a second written notification to Subcontractor, which shall state that if Subcontractor fails to commence and continue correction of default within seven (7) days of the written notification, the agreement shall be deemed terminated. A written notice of termination shall be issued by Contractor by Subcontractor at the time said Subcontractor is terminated. Contractor may furnish those materials, equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of Contractor's work, including, but not limited to, Subcontractor's work. All costs incurred by Contractor in performing subcontract work, including reasonable overhead, profit, attorney's fees, costs and expenses, shall be deducted from any monies due or to become due to Subcontractor. Subcontractor shall be liable for payment of any amount by which such expense may exceed the unpaid balance of the said contract amount. At Subcontractor's request, Contractor shall provide a detailed accounting of the cost to finish subcontract work.

(d) Termination by Subcontractor. Subcontractor shall have no right to terminate Subcontractor's work except in the event Subcontractor has not been paid progress payments within twenty (20) days after Owner has paid the equivalent progress payments to Contractor. In the event Owner has paid Contractor for work covered by a valid application for payment by Subcontractor, and Contractor has not paid Subcontractor within twenty(20) days of receipt of such payment from Owner, then Subcontractor may terminate this agreement upon giving Contractor seven (7) days written notice. Upon such termination, Subcontractor shall be entitled to recover from Contractor payment for all subcontract work satisfactorily performed but not yet paid for. However, if Owner has not paid Contractor for the satisfactory performance of subcontract work, then Subcontractor shall not have a right to terminate this contract.

17. **Safety.** To protect persons and property, Subcontractor shall establish a safety program implementing safety measures, policies, and standards conforming to (1) those required or recommended by governmental and quasi governmental authorities having jurisdiction, and (2) requirements of this agreement. Subcontractor shall keep the project site clean and free from debris resulting from subcontract work.

18. **Schedule.** In the event Contractor prepares a schedule for performance of Contractor's work (progress schedule). Subcontractor agrees to prosecute subcontract work in good faith and with due diligence and promptness, and agrees to be bound by the progress schedule. The progress schedule (if any) and all subsequent changes and additional detail shall be submitted to Subcontractor in advance of required performance. Contractor shall have the right to determine, and if necessary change, the time, order and priority in which various portions of subcontract work shall be performed, and all other matters relative to the subcontract work.

19. **Claims and Disputes.**

(a) Claims Relating To Contractor. Subcontractor shall give Contractor written notice of all claims within seven (7) days of Subcontractor's knowledge of facts giving rise to the event for which claim is made; otherwise, such claim shall be deemed waived. All unresolved claims, disputes, and other matters in question between Contractor and Subcontractor shall be resolved in the manner provided in this agreement.

(b) Damages. If the prime agreement provides for liquidated damages or other damages for delay beyond the completion date set forth in this agreement, and such damages are assessed, Contractor may assess a share of the damage against Subcontractor in proportion to the Subcontractor's share of responsibility for delay. However, the amount of such assessment shall not exceed the amount assessed against Contractor. Nothing in this agreement shall be construed to limit Subcontractor's liability to Contractor for Contractor's actual delay damages caused by Subcontractor's delay.

(c) Work Continuation and Payment. Subcontractor shall continue subcontract work and maintain the progress schedule during any dispute resolution proceedings. If Subcontractor continues to perform, Contractor shall continue to make payments in accordance with this agreement.

(d) No Limitation of Rights. Nothing in this article shall limit any rights or remedies not expressly waived by Subcontractor which Subcontractor may have under lien laws or payment bonds.

(e) Direct Discussion and Mediation. If a dispute arises out of or relates to this agreement, the parties shall endeavor to settle the dispute through direct discussion. Disputes between Subcontractor and Contractor not resolved by direct discussion may be submitted to mediation by the parties before a mediator chosen by the parties. The cost of any mediation proceeding shall be shared equally by the parties participating.

20. **Litigation.** In the event direct discussion or mediation does not result in agreement between the parties regarding disputes, then a lawsuit may be filed in the proper state court. The parties waive jurisdiction in the federal courts and waive their rights to seek transfer to the federal courts. In the event of litigation, subcontractor agrees to pay contractor's reasonable attorney's fees, litigation expenses and court costs.

21. **Date of Commencement and Substantial Completion.**

(a) Date of Commencement. The Subcontractor's date of commencement shall be deemed to be the date of this contract unless a different date is set forth below, being the date affixed by the parties, or the date affixed in a written notice to proceed issued by the Contractor to the Subcontractor.

(b) Substantial Completion. The work of this subcontract shall be substantially completed no later than as described in the construction schedule, or the following date: _____; subject to adjustments of this contract time as may be granted by Contractor to Subcontractor.

22. **Interest Rate.** The parties hereto agree that the applicable interest rate to any payment due under this contract which is not paid in the ordinary course of business and as described in this contract shall be at the rate of 9% per annum from the date interest accrues according to Missouri law.

23. **Colorado or Utah Law Shall Apply.** This contract is being executed pursuant to and shall be construed in accordance with the laws of the State of Colorado or Utah as applicable.

24. **Binding Agreement.** This agreement is binding upon the parties hereto, their heirs, personal representatives, successors and assigns where assignment is permitted.
25. **Entire Agreement.** The parties agree that this agreement is the final expression of the agreement by and between the parties, and that all prior or contemporaneous oral agreements or statements made by either party have been merged into this contract and are contained herein in writing. This contract shall not be amended or modified except in writing signed by authorized representatives of both the Contractor and the Subcontractor.

This Agreement is effective upon the later of the two dates shown below, unless otherwise stated in contract.

SUBCONTRACTOR:

By _____
Authorized Agent

Title: _____

Date: _____

CONTRACTOR:

E.T. Technologies, Inc.

By _____
Authorized Agent

Title: _____

Date: _____