

# SUBCONTRACT

**P.O. No.**



between

Effective Date

1/20/17

**CONTRACTOR**

and

**SUBCONTRACTOR**

Name Johnson Controls, Inc.
Address 812 First State Blvd
City, State, ZIP Wilmington, DE 19804

Name TAI Services
Address 1000 Cobb Place Blvd NW Bldg 300 Suite 300
City, State, ZIP Kennesaw, GA 30144

for

Project Name CHILLER#8-DUPONT EXSTATION	JCI Contract No. 1-45765848899	Address RT 141 LANCASTER PIKE
City, State, ZIP WILMINGTON DE 19880		Description Eddy Current Testing/Condensor & Evaporator

**NOTE: This Subcontract is governed by the provisions set forth below and the Johnson Controls Terms and Conditions attached hereto**

### SUBCONTRACTOR

Name (typed)	Title Subcontractor Representative's Role
Signature	Date

### Approval for Johnson Controls, Inc.\*

Name (typed) Enoch Jackson	Title Branch Manager
Signature	Date

\*To be signed after all DoA approvals (at minimum) are processed within iProcurement

**WORK TO BE PERFORMED:** Subcontractor agrees to furnish all supervision, labor, materials, equipment, tools, incidentals and other items pursuant to the terms and conditions of this Subcontract and as set forth in Scope of Work No. SW \_\_\_\_\_, which is attached hereto as Attachment 1 and incorporated herein (hereinafter "Work").

**FIXED SUBCONTRACT PRICE:** The Fixed Subcontract Price includes, but is not limited to, all local, state and federal taxes that may be due or charged by reason of performance of this Subcontract; licenses, royalty payments, fees, costs, overhead, profit, labor, materials, insurance, payment and performance bonds (as required by and noted herein by the Contractor) and includes any and all costs and expenses incurred in connection with the completion of the Work. Other than modifications by written Change Orders signed by Contractor, no additional amounts shall be paid to Subcontractor other than the following Fixed Subcontract Price:

ACTIVITY - 1-LOX7LYB- testing to be done the week of 1/23/2017 \$2,510.00

**COMPLETION DATE:** Subcontractor agrees to complete the Work described in WORK TO BE PERFORMED above by the following date(s):  
01/27/2017

**SUBCONTRACT AGREEMENT:** This Subcontract consists of (a) this Agreement (Johnson Controls terms and conditions attached hereto); (b) the Contract Documents; and (c) all Attachments attached hereto and made a part hereof. All of the aforesaid documents (and any amendments or modifications thereto) constitute the entire and integrated understanding and agreement between the Contractor and Subcontractor with respect to the subject matter hereof, and supersedes all prior understandings, representations, communications and agreements, whether written or verbal. In the event of any conflict between any Attachment and this Subcontract, this Subcontract will control. Terms and conditions of this Subcontract take precedence over the terms and conditions of any other agreement between Contractor and Subcontractor, as it relates to the Scope of Work described herein. If any provision of this Subcontract irreconcilably conflicts with a provision of the Contract Documents, the provision granting greater rights or remedies to Contractor, or imposing the greater duty, standard, responsibility or obligation on the Subcontractor shall govern. For purposes of this Subcontract, the Contract Documents applicable to this project and the Work to be performed by Subcontractor consist of all higher tier contracts (including but not limited to the Contract between the Owner and General Contractor) and all General, Supplementary and other Conditions together with the drawings, specifications and all addenda issued prior to the execution of this Subcontract.

For Johnson Controls Home Office Information (to be completed by home office)

Date 1/20/17	JCI Contract No. 1-45765848899	Vendor No. 13325	Retention %	Cost Code 580	Subcontract Amount \$2,510.00	Service Order No. 1- 45765848899
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TERMS AND CONDITIONS

Scope of Work Attachment No. SW

- 1. Compliance with Applicable Laws. All Work shall be performed in strict accordance with the Subcontract Documents and with all applicable codes, laws, ordinances, rules, regulations, etc. of the authority having jurisdiction over this project. Subcontractor shall obtain all licenses and permits required for the timely prosecution of the Work.
2. Warranty. All material to be incorporated into the Work shall be new, of the most suitable grade for the purpose intended and in compliance with the terms and conditions of this Subcontract. All Work shall be performed in a skillful and workmanlike manner. Subcontractor warrants that all materials furnished and all Work performed will be free from defects in material and workmanship for a period of one (1) year (or such longer period as may be specified elsewhere in the Contractor's contract with the Owner) after final acceptance of the Work by the Owner of the completed Project. Subcontractor shall, at no additional cost to Contractor, promptly and satisfactorily replace any material and correct any workmanship found to be defective or otherwise not in conformance with this Subcontract, and remedy any damage to other parts of the Work resulting therefrom.
3. Schedule. Time is of the essence in this Subcontract. Subcontractor shall furnish a schedule for its completion of the Work to the Contractor for Contractor's approval. Subcontractor shall notify Contractor in writing immediately upon the occurrence of any delay or expected delay to said schedule, including any mechanical or electrical problems which would interfere with the on-time installation. Subcontractor shall not be liable for delay in performance of the Work due to causes beyond its control and without its fault or negligence provided that Subcontractor immediately provides notice to Contractor of such delay.
4. Payment. The Fixed Subcontract Price shall represent Subcontractor's full compensation for performing all of the Work for the Project required by this Subcontract. Adjustments to the Fixed Subcontract Price may only be made through a Change Order as provided in Section 5 herein. Contractor shall make progress payments to Subcontractor in accordance with the terms and conditions contained in Contractor's contract with Owner. Payments shall be payable to Subcontractor by Contractor only if and to the extent Contractor has received payment from Owner. Progress payments shall include a 10 % retainage.

Subcontractor shall submit with its Application for Payment for each progress payment all such information including, but not limited to, a Schedule of Values and a fully executed Waiver of Liens and Claims, as is necessary for Contractor to review and either (a) process such Application for Payment; or (b) reject the Application for Payment and request re-submission. Payment shall be made by Contractor to Subcontractor as soon as practical after receipt by Contractor of payment. Contractor shall make the Final Payment to Subcontractor if, and only if, Contractor has received final payment from Owner.

- 5. Change Orders. Contractor may, at any time, modify, change, omit or add to the Work to be performed pursuant to this Subcontract via a Change Order. If a Change Order affects the cost of, or the time required for, performance of the Work by Subcontractor, an equitable adjustment to the Fixed Subcontract Price or the completion date, as appropriate, shall be made. Where necessary, to prevent undue delay, Contractor may issue a Change Order before agreement as to an equitable agreement has been reached. In such event, Subcontractor shall immediately proceed in accordance therewith notwithstanding any delay in reaching agreement. Any Change Order that either increases or decreases the Fixed Subcontract Price shall be signed by both Contractor and Subcontractor.
6. Insurance. Subcontractor shall obtain and maintain the insurance required by this Section from a qualified insurance carrier with an A.M. Best Rating of A- or better. Subcontract shall name Contractor and any higher-tier contractor and Owner as additional insureds under the general liability and auto liability policies. All policies furnished by Subcontractor shall be primary and non-contributory. Subcontractor's insurance shall not be cancelled or modified without providing thirty (30) days prior written notice to Contractor. Subcontractor shall furnish certificate(s) of insurance to Contractor prior to beginning the Work.

Subcontractor shall maintain the following insurance coverages with minimum limits as follows:

Table with 2 columns: Insurance Type and Minimum Limit. Rows include Workmen's Compensation (Statutory), Employer's Liability (\$500,000 Each Accident, \$500,000 Disease/Each Employee, \$500,000 Disease Policy Limit), Commercial General Liability (\$3,000,000 Each Occurrence, \$3,000,000 General Aggregate Limit), and Comprehensive Automobile Liability (\$1,000,000 Each Occurrence).

7. Indemnification. Subcontractor shall defend, indemnify and hold harmless Contractor, Contractor's officers, directors, agents, employees, successors and assigns from and against all claims, demands, suits, losses and damages (including reasonable attorneys' fees) arising out of or related to Subcontractor's performance of the Work, regardless of whether such claim, demand, suit, loss or damage was caused, or alleged to have been caused, in part by the party seeking indemnity, however Subcontractor is not required to indemnify for a claim, demand, suit, loss or damage based on the sole negligence or intentional misconduct of the party seeking indemnity.

8. Termination for Default. Contractor shall have the right to terminate this Subcontract for default if (i) Subcontractor fails to prosecute the Work with such diligence as will insure its completion of the Work by the completion date, (ii) Subcontractor fails to correct Work that is not in conformance with this Subcontract, (iii) Subcontractor refuses to defend or indemnify Contractor for a claim asserted against Contractor that is covered by the insurance or indemnity provisions herein, or (iv) Subcontract otherwise materially defaults under this Subcontract.

Contractor shall provide written notice of the default to Subcontractor and Subcontractor shall have no less than three (3) days to cure the default. If the Subcontractor fails to cure the default within the time specified in the notice, this Subcontract shall be terminated. Upon a termination for default, Contractor may take over the Work and prosecute the Work to completion. Contractor may take possession of and utilize Subcontractor's materials and equipment on the Project site as may be necessary for completion of the Work. Subcontractor shall not be entitled to any further payment until the Work is completed, and Subcontractor shall be liable for all costs required to complete the Work. In the event the cost to complete the Work exceeds the amount due Subcontractor under this Subcontract, then Subcontractor shall pay to Contractor the difference.

9. Termination for Convenience. Contractor may terminate this Subcontract for any reason and at any time by providing written notice to Subcontractor. Upon a termination for convenience, Subcontractor shall immediately stop all Work. Subcontractor shall be entitled to payment for all Work satisfactorily completed prior to termination, and will not be entitled to payment for uncompleted Work or anticipated profit or unabsorbed overhead.

10. Disputes. If any dispute shall arise between Subcontractor and Contractor in connection with this Subcontract, the parties shall promptly attempt in good faith to settle the same by negotiation. At any time, and at Contractor's election, the parties shall participate in mediation under the rules of the American Arbitration Association. The costs of the mediation shall be borne equally by the parties. All disputes not settled by negotiation or mediation shall be reserved until the final completion or termination of the Work and negotiation or mediation, at which time they shall be submitted to arbitration in accordance with the prevailing Construction Industry Rules of the American Arbitration Association, except as modified in this paragraph. A single arbitrator shall decide all disputes. No discovery shall be permitted. The arbitrator shall issue a scheduling order within three (3) months after the filing of the demand for arbitration, and no modifications shall be made except by the mutual consent of the parties. The decision of the arbitrator shall be issued within nine (9) months after the date of filing of the demand for arbitration, and the arbitrator shall state in writing the factual and legal basis for the award. The award rendered by arbitrator shall be final and judgment may be entered upon it in accordance with the applicable law in any Court having jurisdiction thereof.

11. Johnson Controls Property. All materials furnished by and used by Johnson Controls personnel at the installation site, including documentation, schematics, test equipment, software, and associated media remain the exclusive property of Johnson Controls. Subcontractor agrees not to use such materials for any purpose at any time.

12. Nonsolicitation. Subcontractor agrees that, during the term of this Subcontract, it shall not, except with the prior written consent of Contractor, offer employment to, employ or otherwise solicit in any manner any person who is employed, engaged as a consultant or otherwise engaged or retained by Contractor. This provision shall not restrict the right of Subcontractor solicit or recruit generally in the media, and shall not prohibit Subcontractor from hiring an employee or consultant of Contractor who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by Subcontractor.

13. Miscellaneous. Additions, deletions, and modifications to this Subcontract may be made upon the mutual agreement of the parties, in a writing signed by both parties. These modifications may take the form of additions or deletions to the phases of work or modifications to the original scope of Work.

Subcontractor has reviewed Johnson Controls "No Harassment" Policy and agrees to maintain a no harassment environment for JCI employees and customers. Subcontractor has reviewed Johnson Controls "Subcontractor Safety Specifications and agrees to comply with the requirements therein.

Retention amounts on any Subcontract will not be paid until all close out materials have been received.

Subcontractor shall not assign all or any portion of this Subcontract without the prior written consent of Contractor. Any assignment by Subcontractor without Contractor's prior written consent shall be void.

Subcontractor shall keep its work and storage areas cleared of debris at all times and upon completion of the Work, and shall leave the premises in broom-clean condition. Contractor may clean up the premises and charge to Subcontractor's account all costs for said cleanup.