



## SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement (“Agreement”) is effective as of **DATE** by and between, **NAME OF CONTRACTOR**, whose principal place of business is **CONTRACTOR’S LOCATION** (hereinafter referred to as “Contractor”), and **NAME OF SUBCONTRACTOR** whose principal place of business is **SUBCONTRACTOR’S LOCATION** (hereinafter referred to as “Subcontractor”).

**This paragraph identifies the parties entering the agreement. It will be important to revise the bolded terms each time the contract is used for a project.**

The Contractor and the Subcontractor agree, for the Subcontract Amount listed below for the Project listed as follows, including, but not limited to, all labor, material and equipment as required as per plans, specifications, existing conditions, construction schedule for the sum of:

PROJECT NAME	
DOLLAR AMOUNT OF SUBCONTRACT AGREEMENT (“Subcontract Amount”)	\$

**This provision will need to be completed each time the template is used.**

**WHEREAS**, Contractor is engaged in the business of providing \_\_\_\_\_ services (“Contract Services”) to Customers in a variety of industries. For purposes of this Agreement. “Customer(s)” means the Customer or Customers specifically identified on any Work Order (as defined in Section 2);

**This paragraph needs to identify the contractor’s services which will most likely be listed as “construction services.” This paragraph also further defines the work being done by limiting the Agreement to a particular Customer. Further modification may be necessary if a Work Order is not being used.**

**WHEREAS**, Subcontractor is engaged in the business of providing Contract Services to such Customers; and

**This paragraph serves as reassurance that the Subcontractor has the proper amount of experience and is capable of providing this type of work on prior occasions.**



**WHEREAS**, Contractor and Subcontractor desire to enter into this Agreement to provide for certain Contract Services for the Customers.

**NOW, THEREFORE**, by reason of the premises and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**1. EXHIBITS.** The following exhibits attached hereto are incorporated herein by reference and made a part of this Agreement:

Exhibit A: **Scope(s) of Work**

Exhibit B: **Insurance Requirements**

**This paragraph should list the exhibits the parties will need to integrate into the contract. For example, a Scope of Work, Work Orders and the Insurance Requirements are documents that may typically be attached.**

**2. DESCRIPTION OF WORK.** Subcontractor hereby agrees to perform, as an independent contractor, the work described and ordered pursuant to the work orders (the “Work Order(s)”), which Contractor will provide to Subcontractor. Subcontractor shall, at its own cost and expense and within the time set forth for performance of the Work Order, provide all labor, materials, supplies, tools, appliances, permits, certificates, and equipment (the “Materials”) necessary for performance of this Agreement in a professional manner which produces the highest possible quality of outcome (“First-Class Workmanship”) for all of the work set forth in any Scope of Work, Work Order, any Specifications and any other agreement between Subcontractor, Customer and Contractor relating to such services to be provided by Subcontractor to the Customer at any time, including work performed prior to the effective date of this Agreement (collectively, the “Work”).

**This paragraph makes it clear that Subcontractor is an independent contractor and should be used to describe the work being done with as much specificity as possible.**

All Materials shall be of the highest content and quality available to Subcontractor, unless otherwise specified by Contractor in the applicable Scope of Work, attached hereto as *Exhibit* \_\_\_\_ Each *Exhibit* \_\_\_\_ may be modified from time to time by Contractor upon written notice to Subcontractor at least five (5) days prior to the effective date of such modification. In such event, a replacement *Exhibit* \_\_\_\_ shall be sent by Contractor to Subcontractor. Subcontractor shall be deemed to have assented to such modifications if Subcontractor has not sent notice to the contrary to Contractor at least three (3) days prior to the effective date of such modification. Subcontractor agrees to accept all reasonable standards for the performance of Work which are issued by the Customer.

**The Contractor should include the Exhibit which may describe the Materials. This will typically be the Scope of Work or Work Orders.**



Regardless of whether set forth in the Scope of Work, any Work Order, or any Specifications, the Work shall include without limitation, any item of labor, tax, service and or materials reasonably implied or customarily furnished by a Subcontractor performing work of the type described herein or required to complete the Work in compliance with any applicable law, ordinance or regulation of any governmental agency or union, or necessary to obtain any inspections or approvals being obtained by Contractor.

**This paragraph provides certainty that the Subcontractor has provided its best estimate of the cost of materials. This paragraph also provides certainty that the Subcontractor fully understands the requirements of the Work.**

Subcontractor hereby agrees that Subcontractor shall do everything required by this Agreement, the Work Order, including all Specifications, Customer Specific Requirements, Scope of Work and any other contract documents that are binding upon Contractor with respect to the Work (collectively, the “Contract Documents”). All Specifications provided by Contractor to Subcontractor shall remain the property of Contractor. Subcontractor shall be bound by the Contract Documents between Contractor and the Customer with respect to the Work. If any dispute between Contractor and Subcontractor involves the Customer or the Contract Documents between Contractor and the Customer, Subcontractor shall be bound by all provisions of the Contract Documents between the Customer and Contractor and Subcontractor’s recovery against Contractor shall be limited to the same percentage as the amount actually received by Contractor from the Customer for any claim of Subcontractor.

**This paragraph addresses disputes between the Contractor and the Customer and limits the Subcontractor’s recovery to the same percentage of the amount that the Contractor was supposed to receive from the Customer.**

Subcontractor shall be fully responsible for the payment of wages, payroll taxes, unemployment insurance taxes, workers’ compensation, social security and any other benefits with respect to Subcontractor’s employees performing the Work (the “Employees”).

**Once again, this paragraph is making it clear that the Subcontractor and its employees are independent contractors and, therefore, the Contractor has no responsibility.**

a) ***Supervision & Hiring Practices:*** Subcontractor represents and warrants that Employees are properly trained and qualified to perform the Contract Services. Subcontractor represents and warrants that it maintains a drug-free and alcohol-free workforce. To the fullest extent permitted by law, Subcontractor represents and warrants that it has performed or shall perform criminal background checks on all Employees performing Work prior to performance of any such Work and Subcontractor shall prevent any Employee who has been convicted of a felony from performing Work. Further, Subcontractor represents and warrants that it, none of its employees, and none of its agents is a person or entity with whom U.S. entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order or other governmental action and shall not allow any such person to perform any portion of the Work. Subcontractor represents and warrants that it will supervise its Employees vigilantly and will notify Contractor and Customer immediately upon

notice to Subcontractor of any potential or actual dishonesty, theft or misappropriation of any kind by any Employee or any third parties' employee (if applicable). Subcontractor agrees and acknowledges that Customer maintains merchandise, equipment, supplies and highly confidential information at its facilities, none of which is to be removed from its facilities, and that theft or misappropriation of such material by any Employee shall be the sole responsibility of Subcontractor.

**The Subcontractor is warranting that their employees are qualified to complete the work and that Subcontractor will monitor its own employees on the worksite.**

***b) Security on Customer's Premises:***

**(i)** Subcontractor shall ensure that its Employees do not: (1) enter any location of Customer where the Work is to be performed (each, a "Location") under the influence of alcohol or drugs; (2) bring alcohol or drugs to the Location for any reason; (3) enter any Location with firearms (whether permitted, licensed, or legal); (4) invite to or allow at the Location any other person, including but not limited to, any friend, relative or co-worker, who is not scheduled to perform the Work at the Location at such time; (5) enter areas of any Location not related to or required by performance of the Work.

**(ii)** If Subcontractor, Customer, or Contractor deems any Employee to be under the influence of alcohol or drugs, or if Customer, Contractor, Subcontractor or any other employee has observed any Employee bringing alcohol or drugs onto a Location. Subcontractor shall require such Employee to immediately leave the Location and Subcontractor shall prevent such Employee from returning to the Location.

**These paragraphs are shifting all responsibility for Subcontractor's employees to the Subcontractor.**

***c) Independent Subcontractor:*** Subcontractor shall perform Contract Services under this Agreement as an independent contractor to Contractor and Subcontractor shall retain control over and responsibility for its own operations and Employees. Nothing contained in this Agreement shall be construed as constituting or creating a partnership, joint venture, agency, franchise, or other association or relationship among Subcontractor and Contractor or any Customer. Neither Subcontractor nor its principals, members, directors, officers, or Employees shall be considered employees or agents of Contractor or its Customers as a result of this Agreement; nor shall any of them have authority to contract in the name of or bind Contractor, except as expressly agreed to in writing by Contractor. To the extent that either party undertakes or performs any duty for itself or for the other party as required by this Agreement, the party shall be construed to be acting as an independent contractor and not as a partner, joint venture, or agent for the other party.

**If the paragraphs above are not clear that Subcontractor is an independent subcontractor, this paragraph drives the point home.**

d) **Equipment:** If Contractor specifies special equipment for the performance of the Work, Subcontractor shall use equipment that conforms to such specifications in Subcontractor's performance of the Work.

**This paragraph ensures Subcontractor has proper equipment to perform the work.**

e) **Premises:** Subcontractor shall keep the premises reasonably clean of all trash and debris while work is in progress and, on completion, shall remove all his trash and shall clean their work. Should the Subcontractor neglect or refuse to do this, the Contractor shall have the right to do it, and deduct the cost from the Subcontractor's payment.

**This paragraph requires the Subcontractor to keep the jobsite as clean as reasonably possible.**

f) **Customer Communication:** Subcontractor shall not engage in any direct communication ("Direct Communications") with Customer or Customer's employees at any Location for purposes other than to fulfill the terms of the Agreement without the express written permission from Contractor.

**This paragraph makes it clear that all communications between the Customer and the Subcontract must go through the Contractor.**

**3. VERIFICATION OF SPECIFICATIONS.** Subcontractor acknowledges and agrees that the dimensions given in any Specifications are only approximate. Subcontractor shall verify all such information independently and examine all Specifications as reasonably necessary to satisfy Subcontractor of the conditions to be encountered during performance of the Work. Further, Contractor expressly disclaims any implied warranty of freedom from defects of any specifications. In the case of discrepancy, error, inconsistency or omission in Specifications, Subcontractor shall promptly submit the matter to Contractor, who shall make a determination in writing regarding the appropriate Work to be performed. Subcontractor shall bear the risk and expense of any adjustment, addition or omission of services performed without such determination by Contractor. Subcontractor acknowledges and agrees that omissions from details of the Work, which are manifestly necessary to carry out the intent of Specifications, or which are customarily performed, shall not relieve Subcontractor from performing such omitted or misdescribed details of the Work and shall be performed by Subcontractor as if fully and correctly set forth and described in Specifications.

**The Contractor is relying on the Subcontractor's expertise. This paragraph makes it clear that the Subcontractor must confirm all specifications.**

**4. COMPLIANCE WITH ALL APPLICABLE LAWS.** Subcontractor shall comply with all applicable laws in performing the Work. Subcontractor shall not take, and is not authorized to take, any action in the name of or on behalf of Contractor or Customer, or which would violate any applicable law.

**Outside the responsibilities in this Agreement, this paragraph further obligates the Subcontractor to comply with all applicable laws.**

**5. COOPERATION BETWEEN PARTIES.** Contractor shall cooperate with Subcontractor in the performance of the Work, and Subcontractor shall cooperate with Contractor and with other Subcontractors in order to ensure First-Class Workmanship in every respect.

**While it seems that cooperation by the parties should be inherent, a Contractor should still include a provision requiring the Subcontractor's cooperation should a problem arise with the Work.**

**6. TIMELINESS.** Subcontractor acknowledges and agrees that time is of the essence for this Agreement. Subcontractor shall perform the Work at the time, date and place set forth in the Scope of Work, Work Order or Change Order and shall perform such Work with promptness and diligence and complete such Work as set forth by the Contractor. Subcontractor represents and warrants that it has reviewed the completion criteria for the Work and that the Work to be performed under this Agreement can reasonably be performed according to such schedule.

**This paragraph provides certainty that the Subcontractor can perform the work within the requirements provided by the Customer or the Contractor.**

In the event that Subcontractor is delayed due to acts of the Customer or Contractor, Subcontractor shall not be entitled to any damages due to such delay but shall be entitled only to such time extension as is actually granted by the Customer for such delay. Subcontractor shall make all claims for any time extension in writing to Contractor within five (5) days of the occurrence of the event causing the delay, and Subcontractor's failure to provide such claim in writing to Contractor within such five (5) day period shall constitute a waiver of any claim for such time extension.

**This paragraph controls how delays in performing the work should be handled by all the parties.**

If Contractor, in its sole discretion, determines it is inadvisable to proceed with any Work as a result of fire, earthquake, storm, rainfall, flood, Acts of God, war or war defense conditions, public enemy, acts of any governmental agency, unusual delays in transportation or other causes or conditions beyond the control of Contractor or Customer, then Contractor, at its option, may either suspend the Work to be performed or immediately terminate any applicable Scope of Work. If Contractor elects to suspend the performance of the Work hereunder, Subcontractor shall, upon receipt of written notice from Contractor, immediately discontinue performance of the Work until such time as Contractor may deem it advisable to resume the Work. Subcontractor shall resume the Work promptly upon receiving written notice from Contractor to do so. Subcontractor acknowledges and agrees that it shall not be entitled to any damage or compensation on account of cessation or suspension of Work as a result of any of the causes set forth in this Section.

**This paragraph allows the Contractor to control the progress of the work if unforeseen circumstances arise.**

**7. INSPECTIONS, APPROVALS AND WARRANTY.** Before proceeding, the Subcontractor shall inspect all surfaces and preparatory work done by others which affect his work. In the event any condition is found that will prevent his completing their work satisfactorily and in accordance with plans and specifications and this agreement, the Subcontractor is to notify the Contractor in writing before proceeding. If the Subcontractor proceeds without giving written notice, this shall constitute his acceptance of all such surfaces and preparatory work.

The Work performed pursuant to this Agreement shall be subject to inspection and approval by Contractor. Contractor shall have the right to determine satisfactory completion of the Work, and shall have the right to reject defective Material or Work which does not conform to the Scope of Work, the applicable Work Order, or is not performed to the satisfaction of the Customer (the "Customer's Satisfaction"). Rejected workmanship or Work which does not conform to the Scope of Work, the applicable Work Order, or Customer's Satisfaction shall be promptly and satisfactorily corrected by Subcontractor. Subcontractor shall, at the request of and in a manner acceptable to Contractor, correct any defects in workmanship or Materials that occur within a period of one (1) month from the date of final completion of the Work. Contractor shall notify Subcontractor in writing of any defects in workmanship or Materials. Subcontractor shall correct such defects within five (5) days from notification by Contractor of any such defect. If Subcontractor fails to correct such defects within the five (5) day period, such failure shall constitute a breach of this Agreement and Contractor shall have the right to the remedies set forth in *Section 11* hereunder, in addition to any other rights of Contractor pursuant to this Agreement.

**This paragraph allows the Contractor to have the final say on all Subcontractor work. The paragraph also ties in the paragraph 11 which allows the Contractor to terminate the subcontractor.**

**8. LIEN WAIVER.** Subcontractor, under the laws of the jurisdiction in which the Work is performed, does hereby waive and release any and all liens or claims of lien or other encumbrances and waives and releases all future claims of lien on Work or other encumbrances performed at any Location or Contractor property, premises and any improvements thereon. Subcontractor shall ensure that all parties and/or individuals providing labor and/or materials for the Work will be paid in full for all labor and/or materials supplied at the direct or indirect request of the Subcontractor for any and all Work under this Agreement.

**Paragraph 8 must be included to prohibit Subcontractor from placing a lien on property.**

**9. FAILURE TO PERFORM.** If Subcontractor shall at any time: (a) fail in any respect to perform the Work in accordance with this Agreement; (b) cause, by any action or omission, the stoppage or delay of or interference with the work of Contractor or of any other Subcontractor; (c) fail to perform all corrective work arising from its guarantee of First-Class Workmanship in a manner which is timely and satisfactory; (d) violate any of the terms this Agreement; (e) be adjudged as bankrupt or make a general assignment for the benefit of its creditors; (f) have a receiver appointed for Subcontractor or its assets; (g) become insolvent or become a debtor in reorganization, composition, or arrangement proceedings; (h) fail to make prompt payment to Subcontractor's Employees for labor performed on or Materials or equipment used in Subcontractor's Work; (i) cause by any policy, action or failure to act by Subcontractor a labor dispute; or (j) otherwise fail to perform any obligation under this Agreement, then, Contractor

may, at its option, without prejudice to any other rights or remedies given Contractor by law or pursuant to this Agreement, (A) immediately terminate this Agreement or (B) notify Subcontractor that this Agreement shall terminate thirty (30) days after the date of such notice (each the “Effective Termination Date”) and, in addition to its other remedies, perform the Work by whatever method Contractor may deem expedient. In the event of (A), Subcontractor shall not be entitled to payment for any Work performed after the Effective Termination Date on such notice, except as provided in the last sentence of this paragraph. In the event of (B), Subcontractor shall be entitled to payment for Work performed prior to the Effective Termination Date, except as provided in the last sentence of this paragraph. In the event of (A) or (B) above, Subcontractor shall be liable to Contractor for (1) any and all costs or expenses incurred by Contractor to complete the Work, (2) an amount for overhead equal to 15% of the amount expended by Contractor to complete the Work, and (3) any losses sustained by Contractor as described in Section 21 below (such amounts in 1, 2 and 3 hereinafter referred to as “Subcontractor’s Liability”). Any amount otherwise due to Subcontractor under this Agreement or any Work Order shall be offset by Subcontractor’s Liability. In the event Subcontractor’s Liability exceeds the amount otherwise due to Subcontractor, Subcontractor agrees to pay to Contractor upon demand the full amount of such excess, together with interest thereon at the maximum interest rate permitted by law. In the event Subcontractor’s Liability is less than the amount otherwise due to Subcontractor, the difference between the amounts otherwise due to Subcontractor and Subcontractor’s Liability shall not be paid to Subcontractor until ninety (90) days after the Work required by this Agreement is fully completed and accepted by Contractor.

**This provision provides the Contractor with certain remedies if the Subcontractor fails to perform as agreed.**

**10. LABOR DISPUTE.** In the event of any labor dispute which has been caused by any policy, action or failure to act by Subcontractor, Contractor may, at its option, exercise any one of the following specified rights in addition to any other rights that Contractor may be entitled to exercise by law or in equity, or otherwise under this Agreement:

- i. Immediately terminate this Agreement without liability or responsibility therefore to Subcontractor, its employees, agents, successors, assigns, Subcontractors or any other person or entity;
- ii. Require that Subcontractor immediately cease performance of the Work until the labor dispute ceases, during which time Contractor may perform the Work in any manner it chooses, deducting the cost thereof from any amounts due to Subcontractor under this Agreement; and/or
- iii. Hold Subcontractor liable for all costs incurred by Contractor as a direct result of a Subcontractor-caused labor dispute and/or failure to perform.





If the Work has been stopped as a result of some industry-wide labor dispute, Contractor may, at its option and in addition to any other rights that it may have by virtue of law, or in equity, or pursuant to this Agreement, immediately terminate this Agreement or the applicable Scope of Work Order and Subcontractor shall be paid for the portion of the Work completed through the date of termination.

**While this provision addresses the limited situation where work is stopped from a labor dispute, it may still be worthwhile to include this provision just in case.**

**11. TERMINATION FOR CONVENIENCE.** This Agreement may be terminated by either party, upon thirty (30) days prior written notice to the other party. The effective date of such termination shall be thirty (30) days after the date of the notice (the “Effective Date of Termination for Convenience”). This right to terminate shall be in addition to any other right of Contractor to terminate this Agreement as provided herein. In the event of a termination for convenience by Contractor, the amounts due to Subcontractor by Contractor shall be limited to the Work actually performed and Material supplied prior to the Effective Date of Termination for Convenience as determined by Contractor in its sole discretion, less any amounts already paid by Contractor to Subcontractor for the Work performed or Materials supplied. Subcontractor shall not be entitled to any payments for any Work that has been performed after the Effective Date of Termination for Convenience. If Customer notifies Contractor or Subcontractor of its desire to terminate any Work under this Agreement, such termination for the applicable Scope of Work shall be immediate and Subcontractor’s sole recovery shall be limited to the amount actually received by Contractor from Customer for Work performed by Subcontractor. Upon notification of such intention to terminate a Scope of Work or Work Order, Subcontractor will immediately cease all Work under such Scope of Work and any amounts due to Subcontractor by Contractor or Customer shall be limited to Work performed prior to the notification of termination.

**This provision allows either party to terminate the agreement with proper notice and the consequences if the agreement is terminated before the work is complete.**

**12. CONDITIONS TO PAYMENT.** Contractor agrees to issue payment, which payment shall be issued to Subcontractor via standard US Mail, postage prepaid, no later than the first business day of each month, net thirty (30) days from the end of month, unless a Customer provides for a different period for payment as set forth in any Scope of Work, in which case such different period shall control for that provided, however, that the following shall be conditions precedent to any obligation that Contractor may otherwise have under any Work Order or this Agreement to timely pay Subcontractor: (a) Subcontractor shall have executed this Agreement and all applicable exhibits; (b) Subcontractor shall have complied with *Section 20* of this Agreement (Insurance); (c) Subcontractor shall have provided to Contractor a completed IRS Form W-9; (d) Contractor shall have received a Work Order completed in accordance with all terms of this Agreement, within thirty (30) days of Subcontractor completing such Work (or other applicable time period if set forth by Customer and stated on Work Order); (e) Contractor shall have received full payment from the Customer for the Work performed by the Subcontractor (in the event of partial payment, Contractor shall remit a pro rata portion of such partial payment received from the Customer); (f) Contractor shall have received evidence from Subcontractor of payment to its Subcontractors and suppliers; and (g) the Work shall have been performed to the satisfaction of Contractor and the Customer. If Subcontractor was out of compliance for any length of time and comes back into



compliance. payment may take up to three (3) business days to be issued.

**Payment to the Subcontractor is governed by this provision. Subparts (a) through (g) protects the Contractor by creating conditions before payment is made.**

No Claims by Subcontractor for additional compensation due to delay, adverse weather, overtime premium pay, change of plans, or otherwise shall be valid unless approved by the Customer and paid to Contractor.

**This paragraph confirms Subcontractor's understanding that contract price will not increase if they run into problems that were unforeseen at the time of the bid.**

**13. RIGHT OF OFFSET.** Subcontractor agrees that if Subcontractor breaches this Agreement or any Work Order, Contractor may, at its option, declare that such a breach shall constitute a breach of all agreements and that, in addition to all other rights herein provided, Contractor may withhold any amounts which might otherwise then be due or thereafter become due under any agreements, and Contractor may apply such amounts by way of offset toward remedying any such defaults or breaches in all agreements. This right to withhold shall continue in time and as to such amount as Contractor, in its sole discretion, shall determine is reasonably necessary to satisfactorily carry out the terms and conditions of all agreements, including any warranties contained therein.

**In addition to the other remedies provided to the Contractor in the agreement, this provision allows a contractor to withhold amounts in order to fix any defaults or breaches caused by the Subcontractor.**

**14. LICENSE.** Subcontractor shall obtain any and all licenses, certifications, registrations or permits that are or may be required by law or otherwise prior to performing the Work under this Agreement.

**The Subcontractor is expressly required to provide evidence of proper credentials in order to perform work.**

**15. ACCEPTANCE OF WORK.** No certificate given or payments made under this Agreement shall be conclusive evidence of the performance of this Agreement, either in whole or in part, and no payment shall be construed to be an acceptance of defective Work or use of improper Materials by Subcontractor.

**This provision makes it clear that Subcontractor's work is not accepted merely because payment has been made to them. This is important to make sure Subcontractor makes any repairs to the work and correct defects even after payment.**

**16. TRANSFERS OR ASSIGNMENT.** Subcontractor shall not assign or transfer this Agreement in whole or in part without the prior written consent of Contractor. A reorganization, change of name, or change in the ownership and control of Subcontractor or a change in the operating officers of Subcontractor shall be deemed an assignment or transfer of this Agreement.

In the event that Contractor approves the use of a third party, Subcontractor guarantees its third parties' fulfillment of the applicable obligations imposed upon Subcontractor by this Agreement. Prior to the commencement of Work by such third party, Subcontractor shall require each of its third parties who perform any of the Work set forth herein to agree in writing to be bound by the terms and conditions set forth in this Agreement as if each such third party were a signatory hereto. Subcontractor will promptly pay all costs of labor employed and materials and services furnished and used in the performance of the Contract Services and will not allow or permit any lien to be filed against Customer, Contractor or any of either's real or personal property, owned or leased (collectively, "Property"). In the event a lien is filed against any Property by any person or entity providing labor, materials, or services to or on behalf of Subcontractor relating to the Contract Services, Subcontractor shall, within seven (7) days after Contractor's written request, if allowed by governing law at the location of the Property, pay into court sufficient funds to remove the lien from the Property and, in any event, shall indemnify and hold harmless Contractor, Customer and all others with an interest in the Property from any pecuniary costs whatsoever (including legal fees) relating to or arising out of the lien or any claim to a lien, all without cost to Customer or Contractor.

**This provision will prohibit the Subcontractor from negotiating with another contractor to complete the work.**

**17. INDEMNIFICATION.**

- i. To the fullest extent permitted by applicable law, Subcontractor shall defend, indemnify and hold harmless Contractor, Customer and their respective officers, directors, employees, agents, partners, joint venturers, affiliates, successors and assigns (collectively, the "Indemnified Parties") from and against any and all claims, demands, losses, expenses, damages, liabilities, fines, and penalties (each a "Claim"), arising out of or relating to: (a) Subcontractor's performance of or the failure to perform the Contract Duties; (b) a breach of this Agreement by Subcontractor or any of its affiliates, Subcontractors, agents or employees; (c) any negligence or willful misconduct by Subcontractor or its affiliates, Subcontractors, agents or employees in the performance of the Agreement, Contract Services, or Work; (d) a violation of law; (e) any determination that a relationship, other than that of independent Subcontractor, exists between Contractor and/or Customer and Subcontractor and/or its employees or any other employment- based complaint or grievance; (f) any demands for compensation of any kind by Subcontractor's Employees or personnel; (g) the actual or alleged infringement by Subcontractor (its officers, directors, employees or agents) of any patent, copyright, trademark, trade secret or other property or contract right of any person or entity; or (h) any losses arising out of any lapse of insurance coverage required by this Agreement.

To the fullest extent permitted by applicable law, Subcontractor shall defend, indemnify and hold harmless Contractor and their respective officers, directors, employees, agents, partners, joint venturers, affiliates, successors and assigns (collectively, the “Indemnified Parties”) from and against any and all claims, demands, losses, expenses, damages, liabilities, fines, and penalties (each a “Claim”), arising out of or relating to any negligence by the subcontractor, or its affiliates, agents or employees, in the performance of the Agreement, Contract Services, or Work. The foregoing provision does not apply where the Contractor is solely negligent for any claims, demands, losses, expenses, damages, liabilities, fines and penalties.

To the fullest extent permitted by applicable law, Subcontractor shall defend, indemnify and hold harmless Customer and their respective officers, directors, employees, agents, partners, joint venturers, affiliates, successors and assigns (collectively, the “Indemnified Parties”) from and against any and all claims, demands, losses, expenses, damages, liabilities, fines, and penalties (each a “Claim”), arising out of or relating to any negligence by the Subcontractor, or its affiliates, agents or employees, in the performance of the Agreement, Contract Services, or Work. The foregoing provision does not apply where the Customer is solely negligent for any claims, demands, losses, expenses, damages, liabilities, fines and penalties.

**The Indemnification provision in contracts are one of the most litigated provisions in contract and insurance cases. This body of law has developed to a point where the same contractual language can have different operations depending on the state the parties are working in.**

**These provisions have been drafted to require the Subcontractor to indemnify the Contractor and the Customer. It is important to consider that these provisions do not require the Subcontractor to indemnify for any and all claims. Rather, to comply with the laws of most states, these provisions are limited to providing indemnity for negligence by the Subcontractor.**

The following is applicable to both provisions 17(a) and 17(b) above:

This indemnification is absolute and unconditional and shall apply even if there are allegations that any of the Indemnified Parties contributed to the Claim.

The foregoing indemnification shall extend to all legal, defense and investigation costs, and all other reasonable costs, expenses and liabilities incurred by the party indemnified, from and after the time at which the party indemnified receives written or verbal notification that a Claim has been or may be made, or the Agreement has been breached. The obligations set forth in this section shall remain in effect regardless of whether Subcontractor maintains or fails to maintain any insurance coverage required hereunder. The duty to defend is separate from and in addition to the duty to indemnify and Subcontractor shall defend Contractor and Customer from any Claim in relation to Work under this Agreement regardless of any determination of fault.

For purposes of clarification and not by way of limitation, Subcontractor's indemnification obligation shall include: a) any losses arising out of any lapse in any insurance policy required to be maintained by Subcontractor as set forth in *Section 22*, regardless of whether Subcontractor had knowledge of such lapse; and b) Subcontractor and Subcontractor alone is responsible for their injuries and injuries to anyone who works for said Subcontractor. Subcontractor at its own expense agrees, upon written request by any of the Indemnified Parties, to defend any Claim brought against the Indemnified Parties in a manner and with counsel reasonably acceptable to Contractor. If Subcontractor shall fail to promptly and diligently defend any Claim upon request, the Indemnified Parties may do so and Subcontractor shall, in addition to all other liability under this paragraph, be liable for all costs, expenses, attorneys' fees, damages, awards, judgments and liabilities incurred by the Indemnified Parties. This *Section 20* shall survive the termination of this Agreement.

**Indemnity and Insurance provisions are the two best methods to shift the risk associated with the subcontractor's work back to the subcontractor. These provisions should be closely considered each time the contractor begins working on a project. Further, the contractor may consider having their insurance broker or attorney review these provisions to make sure the contractual language works as intended by the parties.**

**18. INSURANCE.** At all times while performing Work under this Agreement, Subcontractor shall maintain, at its sole cost and expense, insurance in a form reasonably satisfactory to Contractor with limits of liability and all other requirements not less than stated in this section. In the event different limit(s) or requirement(s) are set forth in any Exhibit B, Subcontractor shall comply with the limit set forth in the applicable Exhibit B.

- Minimum General Liability: \$1,000,000 each occurrence and \$2,000,000 general aggregate **INSERT**
- Minimum Umbrella Liability: \$4,000,000 **INSERT**
- Minimum Workers Compensation: (a) Statutory Limits; and (b) \$500,000 for: (i) each accident; (ii) disease- each employee; and (iii) disease policy limit **INSERT**
- The certificate shall name CONTRACTOR and Customer as an additional insureds and certificate holder under each of the required insurance policies. The policy endorsement forms, commercial general liability CG 20 10 07 04 and CG 20 37 07 04 or their equivalent, must be attached and sent with the general liability certificate. CONTRACTOR should be named as an additional insured by using form CG 2010 (Additional Insureds-Owners, Lessees or Contractors), form CG 2037 (Additional Insureds-Owners, Lessees or Contractors—Completed Operations) or form approved by CONTRACTOR.
- All insurance policies shall be primary and non-contributory to any other insurance of Contractor or Customer

**The paragraph provides the limits of insurance typically required for a project. "Insert" has been placed as a reminder that the Contractor should consider the proper amounts of insurance that may be required given the project. Further, the Certificate of Insurance does**



**not provide any rights under the Subcontractor's insurance policy. Rather, it merely states it provides evidence of the subcontractor's insurance limits. Amendments or endorsements to the insurance policy is the only way for a contractor to be certain they are additional insureds under the subcontractor's insurance policy.**

**It is further recommended that the Contractor obtain the forms from STICO Mutual or speak to STICO if subcontractor does not agree to add Contractor as an additional insured in this manner.**

Prior to commencement of any Work under this Agreement, Subcontractor shall:

(1) be in compliance with all the requirements of this section or the applicable *Exhibit B*; (2) have named Contractor and Customer, individually, as an additional insured; and (3) have provided Contractor with a copy of the underlying insurance contracts (the "Insurance Contracts") demonstrating that the Subcontractor's insurance meets or exceeds all requirements of this section or any *Exhibit B*. Upon the procurement of a new Insurance Contract or following the modification or renewal of any Insurance Contract, Subcontractor shall provide Contractor with insurance certificates detailing that the insurance meets or exceeds all requirements of this Agreement. Prior to commencement of any Work under this Agreement, Subcontractor's insurance agent or insurance provider shall furnish Contractor with all Insurance Contracts and endorsements as required by this Agreement, preferably via electronic mail. Upon the procurement of a new Insurance Contract or following the modification or renewal of any Insurance Contract, Subcontractor's insurance agent or insurance provider shall furnish Contractor with all Insurance Contracts and endorsements as required by this section or *Exhibit B* prior to the effective renewal date. Neither furnishing such Insurance Contracts to Contractor, nor any payment made by Contractor to Subcontractor after such Insurance Contracts have been provided, shall be deemed a waiver by Contractor of, or relieve Subcontractor of, Subcontractor's obligation to procure insurance policies that are in compliance with this Agreement. Subcontractor further agrees that it shall not commence Work prior to the approval by Contractor's Compliance Manager of such Insurance Contracts.

**This is where it is helpful to have a knowledgeable insurance broker or attorney. A subcontractor may add contractor as an additional insured through an endorsement that specifically names the contractor or use a broad form endorsement that confers coverage for any party that contracts with the subcontractor. It is important to understand how the subcontractor is complying with this provision and what, if any, limitations there are on that coverage.**

Subcontractor's failure to obtain, maintain, or provide proof of valid insurance under this section shall, at Contractor's option, result in a delay of commencement of the Work by Subcontractor and/or result in a delay of payment of any amounts due to Subcontractor by Contractor pursuant to this Agreement, in addition to any other remedies Contractor may have pursuant to this Agreement or by law or in equity.



Such insurance will require the insurer to notify Contractor, in writing, at least thirty (30) days in advance of modification, cancellation, or non-renewal, excepting notice for the non-payment of a premium, which shall require notice ten (10) days in advance of cancellation or any change adverse to the coverage required herein. Furnishing insurance certificates, contracts or policies by the Subcontractor is not a waiver of any of the Subcontractor's duties under this Agreement. Nothing herein shall relieve Subcontractor of its obligation to maintain the insurance policies required by this section.

**This paragraph provides a good opportunity to remind contractors to closely review the certificate of insurance. Review the date it was issued to make sure the subcontractor does not keep a drawer full of certificates if insurance. The certificate should have been issued by the broker recently and provide evidence of a policy term that will be effective during the entire time the subcontractor will be working on the project.**

Contractor and Subcontractor acknowledge that Subcontractor may from time to time provide Contract Services to a customer of Contractor other than Customer (a "New Customer"). Subcontractor hereby agrees that prior to commencement of Contract Services to a New Customer, Subcontractor shall amend or modify its Insurance Contracts to include Contractor and the New Customer as certificate holders and additional insured under the Insurance Contracts, and provide certificates of insurance reflecting such changes. Subcontractor agrees to indemnify Contractor for any Losses that in any way result from or are related to any failure of Subcontractor to include New Customer(s) as an additional insured as required by this section.

**19. OCCUPATIONAL SAFETY AND HEALTH.** Subcontractor shall use materials, equipment, work methods, and procedures shall conform to and shall at all times be maintained so as to conform to the standards and/or regulations promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970, as amended, ("OSHA") and any State statute which may be promulgated with respect to occupational safety. In the event said materials, equipment, procedures or any other services performed by Subcontractor do not conform to the OSHA or State standards and/or regulations, Contractor may require Subcontractor to correct the defective material, equipment or condition at Subcontractor's expense. Contractor shall have the right to order Subcontractor to cease Work during any period of noncompliance with the provisions and Subcontractor shall be liable for any delay in accordance with the provisions of this Agreement. Subcontractor represents and warrants that it will comply with any Customer-specific health and safety manual that may be provided to Subcontractor from time to time by Contractor.

**Under this provision, the Subcontractor is required to comply with OSHA and all relevant safety laws.**

**20. SEVERABILITY.** Should any of the provisions of this Agreement be held unenforceable, the other provisions of this Agreement shall remain in full force and effect.

**21. NOTICES.** Any notices, consents or other communications required or permitted to be sent or given hereunder by any of the parties shall in every case be in writing and shall be deemed properly served if (a) delivered personally, (b) sent by registered or certified mail, in all such cases with first class postage prepaid, return receipt requested, (c) sent by standard U.S. mail, postage prepaid, (d) sent by priority mail, postage prepaid (e) delivered by a recognized overnight courier



service, or (f) sent by facsimile transmission or electronic mail, to the receiving party at the following address:

If to CONTRACTOR:

**INSERT**

If to the Subcontractor, to the address set forth in the preamble to this Agreement or the electronic mail address or facsimile number provided by Subcontractor to Contractor, unless Subcontractor provides to Contractor other contact information in writing for this purpose.

**This provision provides the requirements for Subcontractor to provide notice under the agreement. The Contractor should insert the name, address and email of the person that should receive notice.**

**22. ENTIRE AGREEMENT.** This Agreement, the exhibits and attachments referenced herein and/or attached hereto, and the related documents specifically incorporated herein by reference, constitute the entire agreement of the parties with respect to the subject matter hereof and supersede and replace in their entirety any and all prior agreements, arrangements or understandings between the parties, whether written or oral. Except for modifications as set forth herein, no modification of this Agreement shall be binding upon the parties hereto unless such modification shall be in writing and signed by each of them.

**This provision makes it clear to both parties that the agreement is the entire agreement between the parties. Many disputes arise out of what the parties may or may not have said during the negotiations or the performance of the work. The parties will need to put any of those into the agreement for them to be binding.**

**23. WAIVERS.** The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed a waiver of such terms and conditions on any future occasion. No waiver shall be implied by any isolated or repeated action or inaction. To be effective, any waiver must be in writing executed by the party to be bound thereby.

**While the parties may agree to waive certain provisions of this agreement after it has been executed, that will not impact any other provision.**

**24. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In addition, the parties agree that (i) an electronic signature shall be considered an original signature, and (ii) a complete copy of the Agreement shall be considered an original instrument, and each, together or separately, shall become binding and enforceable as if original and the parties may rely on the same to prove the authenticity of the Agreement.

**This provision provides guidance to the parties on how the agreement must be executed. It allows for the parties to email signature pages to each other.**





**25. CHANGES, ADDITIONS, STIPULATIONS OR LINING OUT.** Any changes, additions, stipulations, deletions or lining out, including corrective lining out, by either Contractor or Subcontractor shall not be considered agreed to or binding by the other unless such modifications have been initialed or otherwise approved in writing by the other.

**While it would be preferable for the parties to modify the boilerplate agreement prior to signing it, there are times when changes need to be made after it has been executed.**

**26. APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the State of Illinois. By executing this Agreement, the parties hereto consent to sole jurisdiction of the courts of Cook County, Illinois or the U. S. Federal District Court for the Northern District of Illinois with respect to any disputes which may arise out of this Agreement.

**While this provision is often overlooked, it can be one of the most important aspects of the agreement. For example, as seen in the 50 State Survey, the controlling law may directly impact whether the indemnity provision is enforceable.**

**27. SEVERANCE.** If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected. If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**28. JURY WAIVER.** Subcontractor and Contractor waive any right to a trial by jury in any action or proceeding to enforce or defend any rights under this Agreement and any amendment, instrument, document or agreement delivered or which may in the future be delivered in connection herewith, and agrees that any such action or proceeding shall be tried before a court and not before a jury.

**It is generally considered that it is better to have a judge decide the factual issues in contract disputes rather than juries. While a judge will always decide questions of law, it may be more advantageous to have a judge decide the factual issues as well.**

IN WITNESS WHEREOF, the parties hereto on the day and year first above written have executed this Agreement by their duly authorized representatives.

**CONTRACTOR, L.L.C.**

**SUBCONTRACTOR**

Printed Name:

Printed Name:

Title:

Title:

Date:

Date: