

## Agreement – Safety, Insurance, and Indemnification

\_\_\_\_\_[Name of General Contractor]\_\_\_\_\_

This agreement between \_[Name of Subcontractor]\_\_\_\_\_ (hereafter referred to as Subcontractor) and \_\_[Name of Contractor]\_\_\_\_\_ (hereinafter referred to as the Contractor) is effective as of \_\_\_\_\_.

In consideration for \_\_\_\_\_[Name of General Contractor]\_\_\_\_\_ agreement to engage the Subcontractor and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Subcontractor acknowledges and agrees that the requirements set forth herein shall apply to ALL work performed by Subcontractor for the Contractor regardless of when or where the work is performed and regardless of the specific project on which the work is performed.

Subcontractor hereby agrees that the terms of any other agreements between the parties will not extinguish or supersede the requirements set forth herein.

**Safety** Subcontractor agrees that the prevention of accidents to workers engaged in the work under this Agreement is solely its responsibility. Subcontractor specifically agrees to take appropriate precautions to assure the safety of all persons, including, but not limited to, its own employees and other contractors and subcontractors and their employees, whose safety might otherwise be jeopardized by any risk of harm relating to or arising out of the work. Subcontractor shall comply with all applicable safety laws and regulations and that all work, labor, services and materials to be furnished by Subcontractor shall strictly comply with all applicable federal, state and local laws, rules, regulations, statutes, ordinances and directives (hereafter "Laws") now in force or hereafter shall be in effect and further agrees to comply with any and all safety standards established during the progress of the work by the Contractor. Subcontractor with 5 or more employees shall establish and implement a safety program for its work. If requested, Subcontractor shall submit its safety program for review by Contractor. Any review of this Subcontractor's safety program by Contractor shall not be deemed to release Subcontractor or in any way diminish Subcontractor's liability by way of indemnity or otherwise, as assumed by it under this Agreement.

Subcontractor shall immediately submit copies of all accidents or injury reports to Contractor.

**Indemnity** To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Contractor, Owner and their officers and employees and others as required by this Agreement from all claims for bodily injury and property damage (other than damage to the work itself), including the loss of use of property resulting therefrom, that may arise from the performance of the Subcontractor's work but only to the extent caused by the negligence or intentional acts of the Subcontractor, Subcontractor's subcontractors or anyone employed directly or indirectly by any of them. Any obligations assumed pursuant to this Section shall not be construed to negate, abridge or reduce other rights or obligations of indemnity, which otherwise exist as to a party or person described in this Section.

**Insurance** The Subcontractor shall purchase insurance from an insurance company or companies rated A- or better by A.M. Best Companies lawfully authorized to do business in the Commonwealth of Massachusetts. The insurance provisions set forth below are minimum requirements. In the event the Agreement between the Contractor and Owner, (Prime Agreement) specifies additional coverages and/or amounts of coverage then those set forth below and pertaining to the Subcontractor's work, then the Subcontractor shall provide the coverages and/or amounts in accordance with the Prime Agreement. Such insurance will protect the Subcontractor from claims which may arise out of or result from the performance of the Subcontractor's work and for which the Subcontractor may be legally liable, whether such operations be by the Subcontractor or by the Subcontractor's subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Subcontractor, and any subcontractor engaged by the Subcontractor, shall obtain the following insurance:

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Workers Compensation Insurance – For performance of all of the Subcontractor’s work, the Subcontractor shall maintain Workers' Compensation Insurance, including coverage for all executive officers, sole proprietors, partners, and members of a limited liability company, in the amounts required by all applicable statutes, laws, regulations or acts. Such Workers’ Compensation Insurance must list on Item 3A. of the policy Information Page “Part One of the policy applies to the Workers’ Compensation Law of Massachusetts”

Employers’ liability Insurance for damages because of bodily injury, occupational sickness or disease, or death of the Subcontractor's employees. Such insurance shall be written limits of \$500,000 each accident /\$500,000 disease policy limits and \$500,000 per disease per each employee.

Commercial General Liability Insurance written on an “occurrence” basis for damages because of bodily injury, property damage, personal and advertising injury arising out of the Subcontractor’s work and shall include coverage for:

- All operations and premises of the Subcontractor;
- All products and completed operations of the Subcontractor;
- All liability and/or responsibility assumed by the Subcontractor in Indemnity section of this Agreement.
- Explosion, collapse and underground (XCU) hazards;
- The Owner and the Contractor as an additional insured;
- Defense expenses paid in addition to the policy limits;

Additional insured coverage shall be provided to the Owner, the Contractor, and their respective officers and employees, and shall be for both on-going operations via ISO Form CG 2010 (July 2004 Edition) or its equivalent, and products and completed operations via ISO Forms CG 2037 (July 2004 Edition) or its equivalent. Coverage shall be provided on primary basis with no contribution by the Owner’s or the Contractor’s liability insurance. All additional insured endorsements shall be submitted for review and acceptance by the Contractor.

If additional insured status for the Owner, the Contractor, and their respective officers and employees, is not reasonably available for products and completed operations via ISO form CG 2037 (July 2004 Edition) or its equivalent, the Contractor may, at its sole discretion, waive such requirement.

Commercial General Liability insurance purchased by the Subcontractor shall provide the following minimum limits of liability and all coverages shall be maintained during and for at least three years after final completion of the Subcontractor’s work and at all times thereafter when Subcontractor may be erecting, removing or replacing defective work or performing additional work and shall at all times include coverage for the Owner and Contractor as additional insured as required above:

- \$1,000,000 Each Occurrence Limit;
- \$1,000,000 Personal & Advertising Injury - Per Person or Organization Limit
- \$2,000,000 General Aggregate Limit
- \$2,000,000 Products-Completed Operations Aggregate Limit

Automobile Liability Insurance for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of any motor vehicle and/or trailer that the Subcontractor owns, hires, leases or borrows or any motor vehicle and/or trailer used on behalf of the Subcontractor. Automobile Liability Insurance shall also provided coverage for:

- Any equipment that is subject to a compulsory or financial responsibility law or motor vehicle insurance law in the state in which the equipment is principally garaged;
- Owner and the Contractor as additional insured via ISO Form CA 20 48 or its equivalent;

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- All liability and/or responsibility assumed by the Subcontractor the Indemnity section of this Agreement.

Such coverage shall provide minimum limits of \$500,000 Each Accident - Combined Single Limit and shall be maintained for the life of the Subcontract and at all times thereafter when Subcontractor may be erecting, removing or replacing defective work or performing additional work.

Umbrella Liability Insurance for damages because of bodily injury, property damage, personal and advertising injury with, at minimum, the same terms and conditions as the Employers' Liability, Commercial General Liability, and Automobile Liability insurance required by this Agreement and arising out of the Subcontractor's work.

Umbrella Liability insurance shall include the Owner, the Contractor, their respective officers and employees, as additional insureds. Umbrella Liability insurance shall be written as excess of Subcontractor's Employers' Liability, Commercial General Liability and Automobile Liability Insurance ("underlying policies") and also shall be written to drop down and provide primary insurance, including coverage for defense, for the Subcontractor in the event that an aggregate limit in the underlying policies has been exhausted.

Such insurance purchased by the Subcontractor shall provide the following minimum limits of liability and shall be maintained during and for at least three years after final completion of the Subcontract Work and at all times thereafter when Subcontractor may be erecting, removing or replacing defective work or performing additional work and shall at all times include coverage for the Owner and Contractor as additional insured as required above:

\$1,000,000 Each Occurrence  
\$1,000,000 General Aggregate Limit  
\$1,000,000 Products-Completed Operations Aggregate Limit

**Certificates of Insurance** Certificates of insurance and supporting additional insured endorsements acceptable to the Contractor, including any additional coverages and/or amounts of coverage specified in Agreement, shall be filed with the Contractor prior to commencement of the Subcontractor's work. These certificates by this Section shall contain a provision that coverages afforded under the policies will not be canceled until **at least 30 days' prior written notice** has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final completion of the Subcontract, additional certificates evidencing continuation of such coverage shall be submitted to the Contractor annually. The additional insureds shall be designated on said certificate and shall include confirmation that the coverage for the additional insureds is on a primary and non-contributory basis as required. Attached hereto is a sample certificate.

Receipt of copies of insurance policies or certificates of insurance does not waive the Contractor's right to enforce any terms of this Agreement.

Subcontractor shall require all its subcontractors to provide the same insurance as required of the Subcontractor, including adding the Owner and the Contractor as additional insureds where required. As to the insurance required of the Subcontractor's subcontractor, the Subcontractor agrees to obtain from their subcontractor's insurance company (or authorized agent) certificates of insurance as evidence of the required insurance, including the provision on the certificate of insurance that all policies will not be canceled until at least 30 days' prior written notice has been given to the Contractor. Such certificates of insurance shall be filed with and acceptable to the Contractor prior to the execution of this Subcontract.

Failure of Subcontractor to provide the insurance set forth in this Section or any proof of insurance as herein described may, at the option of the Contractor, result in the Subcontractor being terminated for cause, or in lieu of such action the Contractor at its option shall have the right to maintain all said insurance

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for and in the name of the Subcontractor and Subcontractor agrees to pay for the cost thereof and Contractor may deduct such cost from monies otherwise due the Subcontractor

Signed by \_\_\_\_\_ Authorized Representative for [Name of General Contractor]

Name \_\_\_\_\_

Signed by \_\_\_\_\_ Authorized Representative for [Name of Subcontractor]

Name \_\_\_\_\_

Date \_\_\_\_\_

*This draft sub-contractor agreement is provided only as a starting point for discussions about insurance requirements with qualified legal counsel, and may not be complete. Each business's situation is unique and agreements with other parties should be reviewed carefully to reflect the realities between parties.*

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