

# Standard Form of Agreement Between Contractor and Subcontractor

## GENERAL TERMS AND CONDITIONS

### ARTICLE 1

#### THE SUBCONTRACT DOCUMENTS

1.1 The Subcontract Documents consist of (1) these General Terms and Conditions, including the attached Exhibits; (2) the "Subcontract for Master Agreement" documents to be issued by Contractor to Subcontractor for each specific Project in the form attached as Exhibit A; and (3) modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes negotiations, representations or agreements, either written or oral.

1.2 The Subcontract may be amended or modified only by a written modification. The Subcontract documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

1.3 This Agreement shall apply to all projects and work of any type performed by Subcontractor on behalf of Contractor pursuant to any Subcontract for Master Agreement, purchase order, work order, invoice, oral agreement or other form of request for the performance of work.

### ARTICLE 2

#### SUBCONTRACTOR

##### 2.1 EXECUTION AND PROGRESS OF THE WORK

2.1.1 The Subcontractor shall supervise and direct the subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other Subcontractors or Owner's own forces.

2.1.2 The Subcontractor shall promptly submit shop drawing, product data, samples and similar submittals required by the Subcontract documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

2.1.3 The Subcontractor shall submit to the Contractor a schedule of values allocated to the various parts of the Work of this Subcontract, aggregating the Subcontract sum, made out in such detail as the Contractor and Subcontractor may agree upon or as required by the Owner, and supported by such evidence as the Contractor may require. In applying for payment, the Subcontractor shall submit statements based upon this schedule.

2.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment, which may be in the course of preparation, manufacture or transit.

2.1.5 The Subcontractor agrees that the Contractor and the Architect will each have the authority to reject the nonconforming Work of the Subcontractor. The Contractor and Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed by the Owner.

2.1.6 Before the end of the period covered by each payment to be made pursuant to the provisions of Article 8, the Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the end of that period. Submission of an application for payment submitted to the Contractor by the Subcontractor constitutes a warranty that all such payments have been made, and Subcontractor shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

2.1.7 The Subcontractor shall take necessary precautions to protect properly the Work of other subcontractors from damage caused by operations under this Subcontract.

2.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors and the Owner's own forces whose Work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors or the Owner's own forces.

## **2.2 LAWS, PERMITS, FEES AND NOTICES**

2.2.1 The Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work of all Subcontracts. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work if applicable to subcontractor's trade. Subcontractor request and warrants to owner and contractor that they are duly licensed in the jurisdiction in which the work is performed.

2.2.2 The Subcontractor shall comply with all Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

## **2.3 SAFETY PRECAUTIONS AND PROCEDURES**

2.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, ordinances, rules, regulations, and orders of public authorities for the safety of persons and property. The Subcontractor shall report to the Contractor within one day any injury to an employee or agent of the subcontractor which occurred at the site.

2.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

2.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Contractor in writing.

## **2.4 CLEANING UP**

2.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors.

2.4.2 If the subcontractor fails to clean up as provided in the Subcontract documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of clean up costs.

## **2.5 WARRANTY**

2.5.1 The Subcontractor warrants to the Owner, Architect and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract documents, that the Work of this Subcontract will be free from defects not inherent in the quality required or permitted, and that the Work conforms to the requirements of the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. This warranty shall be for a period of one year in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract documents.

## **2.6 INDEMNIFICATION**

2.6.1 To the fullest extent permitted by law, the Subcontractor and Sub-subcontractors shall indemnify and hold harmless the owner, Contractor, agents, representative and employees of any of them from and against all claims, damages, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder such obligation shall be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person.

2.6.2 In claims against any person or entity indemnified under this Agreement by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 3**

### **CHANGES IN THE WORK**

3.1 The Owner may make changes in the Work by issuing modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform work, which would be inconsistent with the changes made by the modifications to the Prime Contract. Subcontractor agrees and understands that the site superintendent has no authority to approve change orders and any and all subcontractor's change orders must be approved in writing by Contractor's Project Manager.

3.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract issued subsequent to the execution of this Agreement, the Subcontract sum and the Subcontract time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract sum and Subcontract time for such revised Work in a manner consistent with requirements of the Subcontract documents.

3.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract documents for any claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. The Contractor shall receive such claims not less than two working days preceding the time by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

## **ARTICLE 4**

### **MEDIATION AND ARBITRATION**

#### **4.1 MEDIATION**

4.1.1 Any claim arising out of or related to this Subcontract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction

Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Subcontract and the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

4.1.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

## **4.2 ARBITRATION**

4.2.1 Any claim arising out of or related to this Subcontract shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 4.1. Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Demand for arbitration shall be filed in writing with the other party to this Subcontract and with the American Arbitration Association, and a copy shall be filed with the Architect.

4.2.2 A demand for arbitration shall be made within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

4.2.3 *Limitation on Consolidation or Joinder.* Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Subcontract shall include, by consolidation or joinder or in any other manner, any person or entity not a party to. The Subcontract under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed, that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not the Architect, the Architect's employee, the Architect's consultant, or an employee or agent of any of them. This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

4.2.4 *Claims and Timely Assertion of Claims.* The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

4.2.5 *Judgment on Final Award.* The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## **ARTICLE 5**

### **TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT**

#### **5.1 TERMINATION BY THE CONTRACTOR**

5.1.1 If the Subcontractor persistently or repeatedly fails or neglects to carry out the Work in accordance with the Subcontract documents or otherwise to perform in accordance with this Subcontract and fails within twenty four (24) hours after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after twenty four (24) hours following receipt by the Subcontractor of an additional written notice and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expenses and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

5.1.2 If the Owner terminates the Contract for the Owner's convenience, the Contractor shall deliver written notice to the Subcontractor. Upon receipt of written notice of termination, the Subcontractor shall:

1. Cease operations as directed by the Contractor in notice;
2. Take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work;
3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

5.1.3 In case of such termination for the Owners convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## **5.2 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE**

5.2.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

5.2.2 An adjustment shall be made for increases in the Subcontract time and Subcontract sum, including profit on the increased cost of performance caused by suspension, delay or interruption. No adjustment shall be made to the extent:

1. Performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible;
2. An equitable adjustment is made or denied under another provision of this Subcontract.

## **5.3 ASSIGNMENT OF THE SUBCONTRACT**

5.3.1 In the event of termination of the Prime Contract by the Owner, the Contractor may assign this Subcontract to the Owner, with the Owners agreement, subject to the provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume the Contractor's rights and obligations under the Subcontract documents. If the Work of the Prime Contract has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

The Subcontractor shall not assign the Work of this Subcontract without the written consent of the Contractor, nor subcontract the whole of this Subcontract without the written consent of the Contractor, nor further subcontract portions of this Subcontract without written notification to the Contractor when such notification is requested by the Contractor.

## **ARTICLE 6**

### **THE WORK OF THIS SUBCONTRACT**

The Subcontractor shall execute all portions of the Work described in Exhibit A of the Subcontract documents, including all labor materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract documents to be the responsibility of others.

## ARTICLE 7

### DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

7.1 The Subcontractor's date of commencement and date of Substantial Completion shall be the date(s) fixed in a notice-to-proceed issued by the Contractor and or as set forth in Exhibit A of the Subcontract. With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of the Subcontract(s). No extension of time will be valid without Contractor's written consent.

7.2 Unless the date of commencement is established by a notice-to-proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

## ARTICLE 8

### PAYMENTS TO SUBCONTRACTOR

8.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Architect, and certificates for payment issued by the Architect, the Contractor shall make progress payments on account of the Subcontract sum to the subcontractor as provided below and elsewhere in the Subcontract documents. Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work of furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create and fiduciary liability or tort liability on the part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

8.2 Subcontractor understands that all payments to Subcontractor will be made from a specific source, specifically, from payments made by Owner to Contractor. No payment whether a progress payment or final payment, will be made to Subcontractor until that fund comes into existence. Subcontractor expressly agrees that Contractor shall have a reasonable amount of time to collect sums from Owner for the Work performed by Subcontractor. Nothing in this paragraph shall be construed as limiting Subcontractor's mechanic's lien or stop notice rights.

8.3 Subcontractor agrees and understands that Contractor must obtain from Subcontractor invoice and payment requests in accordance with Owner's billing requirements. Accordingly, Subcontractor agrees and understands that Subcontractor must submit their Subcontract invoice and payment requests as directed by Contractor's Accounting Department. Such requirements may include, but are not limited to, notarized waivers of lien (in the form acceptable to Contractor and Owner), as-built drawings, air balance reports, executed warranties for all work performed and equipment/materials supplied and any other items reasonably requested by Contractor and/or Owner.

8.4 Subcontractor agrees that no payment schedule and payment provisions other than that which is specified in these General Terms and Conditions shall be valid or enforceable, unless otherwise specified in the Scope of Work issued to Subcontractor by Contractor.

## ARTICLE 9

### FINAL PAYMENT

9.1 Final payment, constituting the entire unpaid balance of the Subcontract sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract documents, and the Architect and or Owner has issued a certificate for final payment covering the Subcontractors completed Work.

9.2 Before issuance of the final payment, the Subcontractor, if required shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with Subcontractors Work have been satisfied.

## ARTICLE 10

### INSURANCE

*10.1* The Subcontractor agrees to purchase and maintain insurance of the types of coverage and limits of liability set forth in Exhibit A as a material condition of this agreement and precondition to receiving payment from Contractor.

*10.2* Coverage must be written on an occurrence and, shall be maintained without interruption from date of commencement of the Subcontractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor.

*10.3* Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies shall contain provision that coverages afforded under the policies will not be canceled, or materially changed, or allowed to expire 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 payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

*10.4* Sub trade is responsible for making sure their Sub-subcontractors are aware of insurance requirements. Failure of Subcontractors or Sub-subcontractor to provide or maintain adequate coverage does not reduce or eliminate their obligation.

I have read the Master Agreement (consisting of the Articles 1 through 10 and Exhibit A) and hereby agree to and accept all terms and conditions stated herein.

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CONTRACTOR

\_\_\_\_\_  
SUBCONTRACTOR

\_\_\_\_\_  
PRINT NAME/TITLE      DATE

\_\_\_\_\_  
PRINT NAME/TITLE      DATE