



SUBCONTRACTOR AGREEMENT BEST PRACTICES

To help you navigate subcontractor agreements more effectively, we have outlined some key practices to help you minimize risk and streamline your process.

NOTICE: THESE BEST PRACTICES ARE OFFERED AS HELPFUL GUIDELINES TO BE CONSIDERED WHEN CONTRACTING WITH YOUR SUBCONTRACTORS AND ARE BASED ON OUR EXPERIENCE IN HANDLING CLAIMS AND LITIGATION RELATED TO THE CONSTRUCTION INDUSTRY. THEY ARE NOT ALL INCLUSIVE OF OR ALWAYS APPLICABLE TO EVERY CONTRACT SITUATION YOU MAY ENCOUNTER. THIS IS NOT LEGAL ADVICE, AND AN ATTORNEY LICENSED IN THE JURISDICTION COVERED BY YOUR CONTRACTS SHOULD BE YOUR PRIMARY SOURCE OF DIRECTION AND COUNSEL WHEN CONSTRUCTING SUCH DOCUMENTS.

NOTHING HEREIN SHOULD EVER SUPERSEDE ANY FEDERAL, STATE, OR LOCAL LAW, OR THE RULES OF CIVIL PROCEDURE, APPLYING IN THE VENUE OR JURISDICTION TO WHICH THE CONTRACT IS SUBJECT. FURTHER, THESE PRACTICES SHOULD NEVER REPLACE THE SOUND ADVICE OF LEGAL COUNSEL IN THESE MATTERS.

- Contracts should be prepared in consultation with an attorney licensed to practice law in the jurisdiction where the contract will be executed and if necessary adjudicated
- Choice of law and forum should be clearly defined, especially for contracts that may be formed in one state, but the work will occur in another
- All subcontractors should be under contract
- Say what you mean and mean what you say as ambiguities will not be interpreted in favor of the contract drafter
- Contracts should always be signed under seal and dated by all parties
- Any changes should be initialed by all parties
- The contract should contain the total agreement between the parties and all exhibits should be incorporated—no handshake or wink-and-nod side agreements
- Any post-execution needs for changes (such as but not limited to change orders) should be in writing
- Define ambiguous terms or terms of art
- Define crucial terms, such as “the work”
- Ensure that any indemnity clause conforms to the law and statutes in the jurisdiction where the contract will be executed and if necessary adjudicated
- Include and spell out Additional Insured requirements and required forms for premises/ongoing operations (e.g., CG 20 10 04 13 or later or equivalent) and products-completed operations (e.g., CG 20 37 04 13 or later or equivalent) and the coverage is provided on a primary and non-contributory basis
- Insurance requirements, including but not limited to the required limits, should be sufficient to cover you and the sub in the event of injury or damage (remember that most policies provide the limits shown in the declarations apply no matter how many claimants or how many insureds are covered/defended)
- COIs should be required, as well as the actual policy documents for review to ensure that the insurance requirements are actually met and that there are no exclusionary terms, conditions, or endorsements that may interfere with obtaining the coverage anticipated (such as, but not limited to, prior-completed operations and residential construction exclusions)
- Contracts and project records should be retained for at least the period covered by the Statute of Repose in the state where the project is performed
- Does the contract contain:
 - Waiver of Subrogation requirements?
 - 30 day written notice of cancellation requirements?
 - Minimum of 3 years of continuous coverage requirements?
 - A.M. Best Rating requirements?
 - No residential exclusions pertaining to single family, condo/townhome, or apartments requirements?
 - No residential exclusions pertaining to roof height, number of stories, or size of project requirements?
 - No exclusions pertaining to prior completed operations requirements?



At work with you.

THE FOLLOWING SAMPLE CONSTRUCTION SUBCONTRACT AGREEMENT IS FOR INFORMATION AND EDUCATION PURPOSES.

SPECIAL NOTICE

THE INFORMATION IN THIS CONSTRUCTION SUBCONTRACT AGREEMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY. THE INFORMATION IN THIS COMMUNICATION AND ITS ATTACHMENT IS NOT LEGAL ADVICE AND IS NOT GUARANTEED TO BE CORRECT, COMPLETE OR UP TO DATE AS THE LAWS FROM JURISDICTION-TO-JURISDICTION MAY CHANGE RAPIDLY. THE LAW IS DIFFERENT FROM JURISDICTION-TO-JURISDICTION AND IS SUBJECT TO INTERPRETATION BY DIFFERENT COURTS. THE LAW IS JURISDICTIONALLY AND SITUATIONALLY SPECIFIC AND NO GENERAL INFORMATION CAN FIT EVERY CIRCUMSTANCE. A LICENSED ATTORNEY IN YOUR JURISDICTION(S) SHOULD BE CONSULTED FOR THE PURPOSE OF REVIEW.

NOTICE: ARBITRATION IS GENERALLY LESS EXPENSIVE AND MORE EXPEDIENT THAN LITIGATION. HOWEVER, ARBITRATION CLAUSES ARE PARTICULARLY PROBLEMATIC FROM A LEGAL STANDPOINT. THE CLAUSE IN THIS SAMPLE CONTRACT IS GENERAL IN NATURE AND MUST BE EDITED TO COMPLY WITH SPECIFIC STATE LAW.

LEGAL DISCLAIMER: THE INFORMATION PROVIDED IN THIS SAMPLE AGREEMENT IS NOT INTENDED TO BE LEGAL ADVICE BUT MERELY CONVEYS GENERAL INFORMATION TO HELP YOU RECOGNIZE LANGUAGE COMMONLY ENCOUNTERED IN GENERAL CONTRACTOR-SUBCONTRACTOR AGREEMENTS. BEFORE USE, YOU ARE ADVISED TO HAVE AN ATTORNEY FROM YOUR STATE REVIEW THIS DOCUMENT AND EDIT AS MAY BE NECESSARY TO CONFORM TO SPECIFIC JURISDICTION CONTRACT LAW.

Key areas of jurisdictional concern are:

SECTION 5. GOVERNING LAW AND RULES OF CONSTRUCTION
SECTION 7. INDEMNIFICATION
SECTION 9. ARBITRATION

SAMPLE SUBCONTRACT AGREEMENT
FL, GA, MD, MS, NC, SC, TN, VA and the District of Columbia
(For Information and Education Purposes Only)

CONSTRUCTION SUBCONTRACT AGREEMENT

On this ____ day of _____, 20 ____, _____(Contractor) and _____, (Subcontractor), HEREBY ENTER into the following Subcontract for work to be performed on behalf of Contractor by Subcontractor at the Work Site(s) identified in this Agreement.

NOTICE: THIS CONTRACT MANDATES ARBITRATION

(FOR SOUTH CAROLINA CONTRACTS: **THIS CONTRACT MANDATES ARBITRATION PURSUANT TO TITLE 15 – CIVIL REMEDIES AND PROCEDURES, CHAPTER 48, UNIFORM ARBITRATION ACT OF THE SOUTH CAROLINA CODE OF LAWS. (SECTION 15-48-10))**)

WHEREAS Contractor desires to retain Subcontractor to perform certain contract Work as described in Section 1.1 for the Work Site(s) listed in Section 3.1;

NOW THEREFORE Contractor and Subcontractor agree as follows:

SECTION 1. SUBCONTRACT WORK

1.1 Subcontractor shall be contracted as an independent contractor and shall provide and furnish all **labor, materials, tools, supplies, equipment, services**, supervision, and administration necessary for the proper and complete performance and acceptance of the following portions of the Work for the Work Site(s): **(DEFINE SPECIFIC SCOPE OF WORK)**

(Edit underlined part above to comply with the individual subcontractor's services)

SECTION 2. SUBCONTRACT PRICE

2.1 In consideration of Subcontractor's performance of this Subcontract Agreement, and subject to the terms and conditions hereinafter set forth, Contractor shall pay to Subcontractor the total sum of _____ dollars **(\$000,000.00)**. Said Subcontract Agreement price is dependent upon the Subcontractor completing the Work as agreed to in this agreement. Should said Work not be completed as agreed, the Subcontract Agreement amount shall be modified accordingly.

2.2. (If applicable, add language for conditions of draw payments and retention. Some states may have specific limits applicable to retention.)

SECTION 3. SPECIAL CONDITIONS

3.1 The Work Site location(s) to which this Subcontract Agreement applies is:

(List location(s) of all Work Sites included under this Agreement.)

Initials: _____ / _____

3.2 Time is of the essence in the performance of this Agreement. There shall be no extension of time for Subcontractor to perform the Work without the execution of a written amendment to this Agreement.

3.3 The commencement date of this Agreement shall be the effective date of this Agreement as first written above. It is anticipated that the Work of this Agreement shall be substantially completed no later than (**Anticipated Completion Date or Number of Days**), subject to any adjustments to the Subcontractor's schedule of Work.

3.4 Subcontractor shall begin Work on the date agreed to between the Contractor and Subcontractor and continue until completion unless otherwise instructed by Contractor. Subcontractor shall conduct work in a prompt, efficient, and effective manner, and shall not cause any delays, either to its own Work or the work of other persons or entities performing on the Work Site(s). Subcontractor shall complete the Work in strict conformance with the scope of Work described in Section 1.1 subject to the understanding that the Work and/or completion date may be amended, changed, or modified, in writing, at any time as agreed to by Contractor and Subcontractor.

3.5 Subcontractor agrees to cooperate with the Contractor in the scheduling of Subcontractor's Work, and to avoid disruptions, interference, delays, conflicts, or other disturbances with respect to Contractor's Work on the Work Site(s). Subcontractor further agrees to cooperate fully with other persons and entities performing or supplying materials on the Work Site(s). Subcontractor shall provide Contractor with immediate notice upon the discovery of any anticipated or actual conflict between the Work of the Subcontractor and any other person or entity performing at the Work Site(s).

3.6 Subcontractor shall submit, as promptly as is practicable any shop drawings, construction data, product information, material samples, and similar submittals, upon request of the Contractor.

3.7 During all phases of the performance of this Agreement, Subcontractor shall perform appropriate clean-up services to keep its work area, and the premises and surrounding area, free from the accumulation of waste and trash materials caused by Work Site operations, and shall leave the premises in a reasonably clean, swept or raked condition. If Subcontractor fails to adequately comply with said clean-up obligations, Contractor may perform the required clean-up by whatever method the Contractor may deem expedient and may charge the Subcontractor for the reasonable costs of such clean-up. However, Subcontractor is not required to perform clean-up of, nor shall Subcontractor be held responsible for, unclean conditions caused by other persons or entities performing on the Work Site.

3.8 Subcontractor shall perform and provide all necessary precautionary measures to adequately protect Work Site property and the work of other persons or entities performing on the Work Site from damage caused by Subcontractor's performance of the Work required by this Subcontract Agreement. Subcontractor shall be liable for any loss or damage to work in place at the Work Site, or to any equipment and materials at the Work Site, caused by Subcontractor or Subcontractor's agents, employees, or guests.

3.9 By execution of this Agreement, the Subcontractor agrees to be bound by Contractor's Work Site safety program, if any, provided to Subcontractor and to strictly observe all state and U.S. Occupational Safety and Health Administration (OSHA) safety requirements. However, to the extent that any safety rules or guidelines of the Contractor exceed OSHA, state, or local safety regulations and requirements, the Contractor's requirements shall be complied with by

Subcontractor. Contractor's safety requirements are in addition to and not in preemption of any federal, state, or local statutes or regulations. Subcontractor shall retain sole responsibility, to the fullest extent permitted by law, for the safety of its employees in performance of Subcontractor's Work and for performing such Work in accordance with all laws, rules and regulations, including, but not limited to any Contractor's established Work Site safety program. By establishment of Contractor's Work Site safety program and its mandatory application to the Subcontractor under the terms of this Subcontract Agreement, Contractor does not create any joint responsibility with Subcontractor for the safety of Subcontractor's employees.

3.10 The Subcontractor agrees to comply with all federal and state laws, codes and regulations, and all local and municipal ordinances and regulations effective where the Work is to be performed, and to pay all costs and expenses attributable to such compliance, to pay all fees, licenses, permits, deposits and taxes, including sales and use taxes, and also to pay all taxes imposed by any local, state, or federal law due to any applicable tax laws, social security acts, employment insurance acts, unemployment compensation statutes, workers' compensation acts, pensions, benefit trust funds, old age retirement funds or any similar authority insofar as applicable to the performance of this Agreement, and to hold the Contractor harmless from any and all loss or damage occasioned by the failure of the Subcontractor to comply with the terms of this paragraph.

SECTION 4. COMMUNICATION AND NOTICE

4.1 Subcontractor shall be deemed to have received notice of a fact, request, order, or demand when it or its Work Site supervisor is notified, either orally or in writing, or four (4) days after written notice is sent by registered or certified mail addressed to Subcontractor's last known place of business, whichever is sooner.

4.2 Contractor shall be deemed to have received notice of a fact, request, or demand when it or its Work Site supervisor is notified, either orally or in writing, or four (4) days after written notice is sent by registered or certified mail addressed to Contractor at **(insert address)**, whichever is sooner.

SECTION 5. GOVERNING LAW AND RULES OF CONSTRUCTION

5.1 The validity, interpretation, and performance of this Subcontract Agreement shall be governed by the laws of the jurisdiction where the Work Site is located.

5.2 If any term or provision of this Subcontract Agreement is determined to be invalid, it shall not affect the validity and enforcement of the remaining terms and provisions of this Subcontract Agreement.

5.3 This Subcontract Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, representatives, and heirs of the parties herein.

SECTION 6. AMENDMENT

6.1 This Subcontract Agreement shall only be amended or modified by written document executed by the Contractor and Subcontractor. This Subcontract Agreement supersedes all prior representations made by Contractor.

SECTION 7. INDEMNIFICATION

7.1 Work covered by this Subcontract Agreement done at the site of construction or in preparing or delivering materials or equipment to the site shall be at the risk of Subcontractor exclusively. Subcontractor shall, with respect to all work that is covered by or incidental to this Subcontract Agreement, indemnify, directly defend, and hold Contractor and its agents and employees; the prime or general contractor; and/or the developer harmless from and against all of the following to the fullest extent permitted by law:

1. Any claim, liability, loss, damage, cost, expense, costs of defense including reasonable attorney's fees, awards, fines, or judgments, provided that said loss arises from death or bodily injury, illness, disease, or damage to or destruction of property, or other loss, damage or expense, including any of the same caused by your work and/or resulting from the alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, by Subcontractor or its agents, employees, sub-subcontractors, or anyone else for whose acts Subcontractor may be liable.
2. Any claim, liability, loss, damage, cost, expense, costs of defense including reasonable attorney's fees, awards, fines, or judgments arising by reason of any obligation or indemnity which Contractor has to a purchaser of the completed dwelling(s) caused by and/or arising out of the work or operations of the Subcontractor, its agents, employees, sub-subcontractors, or anyone else for whose acts the Subcontractor may be liable.
3. It is expressly acknowledged and agreed that each of the foregoing indemnities is independent, and that both shall be given effect. However, Subcontractor shall not be obligated under this Subcontract Agreement to indemnify Contractor with respect to the sole negligence or willful misconduct of Contractor, its agents, employees, servants or subcontractors who are directly responsible to Contractor, excluding Subcontractor.

7.2 Subcontractor shall indemnify and hold Contractor harmless against all liability for claims and liens for labor performed or materials used or furnished to be used on the job, including any costs and expenses for attorney's fees and all incidental and consequential damages resulting to Contractor from such claims or liens. In the event that legal action or other proceeding is brought on such claim or lien, Subcontractor shall defend said suit at its own expense, and will pay and satisfy any such lien or judgment as may be established by the decision of the court, arbitrator, or other reviewing authority in said suit. Subcontractor may opt to litigate claim, provided that Subcontractor causes the effect of said lien or claim to be removed from the premises in advance. Subcontractor agrees that the effect of any such suit, claim, or lien shall be removed from the premises within ten (10) days after written demand from Contractor. Where Subcontractor fails to remove the effect of such suit, claim, or lien in spite of written Contractor request, Contractor may, at its sole option and discretion, use whatever means it deems expedient to cause said lien, suit, or claim to be removed or dismissed, and the cost thereof, together with any reasonable attorney's fees, shall become due and immediately payable by the Subcontractor to the Contractor.

7.3 Notwithstanding any other provisions concerning insurance to be provided by Subcontractor as contained in this Subcontract Agreement or any Subcontractor Agreement Addendum, Subcontractor's indemnity obligations herein shall not be limited in any way by the limits or other terms or conditions of any insurance coverage obtained by Subcontractor, or by any limitation on the amount or type of damages, or for benefits or damages payable under workers' compensation, disability benefit, or other employee benefit statutes, regulations, or ordinances.

SECTION 8. INSURANCE AND WAIVER OF SUBROGATION

8.1 Prior to beginning the Work, Subcontractor agrees to obtain insurance as required by Section 8.2 of this agreement.

All insurance policies must be underwritten by admitted insurers with an A.M. Best rating of A- or better. If a non-admitted insurer or self insurance fund underwrites any Subcontractor's coverage, such insurers or funds must be approved by Contractor in writing and the Agreement shall then be amended.

The required Commercial General Liability policy with Products and Completed Operations coverage and the required Umbrella policy with Products and Completed Operations coverage must be continued for a **period of no less than the Statute of Repose for the jurisdiction** after completion of the Work by the Subcontractor or those working on behalf of the Subcontractor. Contractor, the prime or general contractor, and/or developer shall continue to be endorsed as an Additional Insured subject to the endorsement and limits required in Section 8.2 for the same **period of no less than the Statute of Repose for the jurisdiction**.

8.2 The required insurance coverage, limits and conditions are as follows:

Commercial General Liability - Minimum Limits and Terms

ISO Occurrence Form CG 00 01 04 13, or equivalent, with limits of:

\$1,000,000 Per Occurrence / \$2,000,000 General Aggregate and \$2,000,000 Products and Completed Operations Hazard Aggregate.

The policy must include an unaltered definition of an "insured contract" as defined in ISO Form CG 00 01 04 13 or equivalent.

Contractor the prime or general contractor, and/or developer must be named as an Additional Insured as follows:

Ongoing Operations on ISO Form CG 20 10 04 13 or CG 20 38 04 13 or equivalent;

Products and Completed Operations Hazard on ISO Form CG 20 37 04 13 or equivalent;

Coverage must be on Primary and Non-contributory basis on ISO Form CG 20 01 04 13 or equivalent.

A copy of the exact endorsements attached to the policy must be provided to Contractor prior to beginning the Work on behalf of Contractor.

(Note: For ongoing operations additional insured forms CG 20 10 or CG 20 33 are acceptable unless there is an "upstream party" exposure

Initials: _____ / _____

in the GC's contract with a project owner, prime contractor, developer, etc. In the case of "upstream party" issues the CG 20 38 must be used as the form anticipates that exposure.)

Waiver of Subrogation

ISO Form CG 24 04 or equivalent.

A copy of the endorsement attached to the policy must be provided to Contractor prior to beginning the Work on behalf of Contractor.

Workers Compensation & Employers Liability Insurance

Workers Compensation – Statutory as required in the states(s) where the Work is being performed. Sole proprietors, partners, officers and directors shall not be excluded from coverage.

Employers Liability limits must be no less than:

Bodily Injury by Accident \$1,000,000 each accident
Bodily Injury by Disease \$1,000,000 policy limit
Bodily Injury by Disease \$1,000,000 each employee

Waiver of Subrogation – N.C.C.I. Endorsement Form WC 00 03 13 with Contractor scheduled must be attached to the policy.

Automobile Liability Insurance

Minimum Limits Required: \$1,000,000 Combined Single Limit or Split Limits of \$250,000/\$500,000/ \$100,000 with an Umbrella with limits of a minimum of \$500,000 applying.

Coverage must apply to all owned, hired and non-owned vehicles – Auto Symbol 1.

Umbrella

ISO Occurrence Form CU 00 01 04 13, or equivalent, with limits of:

\$2,000,000 Per Occurrence / \$2,000,000 General Aggregate and \$2,000,000 Products and Completed Operations Hazard Aggregate.

The umbrella policy must be "follow form" to the underlying policies or must be endorsed to ensure it provides no less coverage than the required underlying policies.

8.3 Subcontractor shall provide Contractor with an acceptable ACORD Form 25 (2016/03), Certificate of Liability Insurance, for all insurance required under this Subcontract Agreement prior to commencement of Work. The Certificate shall reference that all applicable policies have been endorsed in favor of Contractor to provide for thirty (30) days written notice to Contractor prior to cancellation, non-renewal or reduction in coverage of said policies for any reason. The Certificate must be provided directly from Subcontractor's insurance agent or the insurance company.

Initials: _____ / _____

8.4 All insurance coverage required under this Subcontract Agreement shall be maintained without interruption or suspension during the entire performance of this Subcontract Agreement, including the supplemental time described in 8.1 for Commercial General Liability. Subcontractor shall provide Contractor with additional Certificates of Liability Insurance indicating continuation of coverage during the entire performance of this Subcontract Agreement but in no instances shall that period of continuous coverage end less than three years from substantial completion of the Subcontractor's Work, or in the cases of the General Commercial Liability and Umbrella policies, as consistent with section 8.1 above, less than the applicable Statute of Repose applying to the Subcontractor's Work.

8.5 None of the required insurance under this contract will contain any provisions with regards to commercial or residential projects that limit, exclude, or otherwise restrict coverage for single family, condo/townhome, apartments, or any other type of multi-family coverage limitation or exclusion.

8.6 None of the required insurance under this contract will contain any provisions with regards to commercial or residential projects that limit, exclude, or otherwise restrict coverage for roof height, number of stories, square feet, or any other height or size requirement for any residential or commercial project.

8.7 None of the required insurance under this contract will contain any provisions with regard to commercial or residential projects that limit, exclude, or otherwise restrict coverage for coverage for prior-completed projects or operations.

8.8 Subcontractor hereby waives all rights of subrogation against Contractor.

SECTION 9. ARBITRATION

9.1 Any and all disputes or claims between the Contractor and the Subcontractor arising out of this Subcontract Agreement **shall be resolved by binding arbitration according to the latest Construction Industry Arbitration Rules of the American Arbitration Association, except to the extent federal, state, or local law, statute, regulation, or ordinance may be in conflict with such rules, in which case federal, state, or local law, statute, regulation, or ordinance will control.** In so agreeing the parties expressly waive their right to a jury trial, if any, on these issues and further agree that the award of the arbitrator shall be final and binding upon them as though rendered by a court of law and shall be enforceable in any court having jurisdiction over the same.

9.2 Should any legal action or proceedings between the Contractor or Subcontractor be required to enforce this Arbitration clause, or to recover damages for the breach thereof, the Subcontractor agrees to pay all court costs and attorney's fees for the Contractor and Subcontractor.

9.3 Where a purchase agreement or construction agreement for any completed **(dwelling, building, project)** which is the subject of Work in this Subcontract Agreement extends to the Contractor and owner, **the right of arbitration to resolve disputes concerning work performed, the same rights, limitations, requirements and procedures concerning arbitration under the purchase agreement or construction agreement shall be extended the Subcontractor. The Subcontractor agrees to accept and be bound by all the rights, obligations and responsibilities which the Contractor assumes towards the owner under the completed (dwelling, building, project) purchase agreement or construction agreement.**

SECTION 10. ASSIGNMENT

No assignment of this Subcontract Agreement by Subcontractor is permitted without prior written permission from the Contractor.

THIS SUBCONTRACT AGREEMENT IS ACKNOWLEDGED AND EXECUTED AS OF THE DATE SET FORTH ABOVE BY:

_____	_____
SUBCONTRACTOR	CONTRACTOR
By: _____(Seal)	By: _____(Seal)
Title: _____	Title: _____

Initials: _____/_____