

Please note: This document is provided for informational purposes only; it is not exhaustive and does not constitute legal advice. Instead, it provides a reference for development of contracts related to when policyholders are hired as subcontractors. Terms in this document will require revision to reflect the circumstances of your contractual relationships and/or the legal requirements of your state. You should consult with a qualified attorney, licensed to practice in your state, prior to utilizing this document. Encova Insurance will not be liable in any manner or to any extent for any direct, indirect, special, incidental, or consequential damages, losses, or expenses arising out of the use of this informational document.

## SUBCONTRACTOR AGREEMENT

**For use when a policyholder is signing a contract as a subcontractor.**

This agreement, by and between *[insert hiring Contractor name]* (“Contractor”) and *[insert Policyholder name, which is being hired as Subcontractor]* (“Subcontractor”), is effective as of *[insert effective date]*.

### SUBCONTRACTOR RESPONSIBILITIES

In consideration for Contractor’s agreement to engage Subcontractor and for other good and valuable consideration, Subcontractor agrees that the requirements in this agreement apply to ALL work performed by Subcontractor for Contractor regardless of when or where the work is performed and regardless of the specific project on which the work is performed. In addition, Subcontractor also agrees that the terms of any other agreement(s) between the parties do not extinguish or supersede the requirements of this agreement.

Specifically, Subcontractor agrees with Contractor as follows:

#### Terms and conditions of work

1. To furnish all materials and perform all work for *[state the type(s) work for which Policyholder/ Subcontractor is hired and the materials to be furnished, preferably by reference to numbers of drawings, project and pages of specifications, bid proposal, and/or a detailed work order or appendix]*. For the purposes of this contract, “Work” or “Project” refer to any and all materials furnished, or work performed pursuant to this agreement, including any amendments and change orders.
2. To complete work on or before *[insert date of completion]* or pay to Contractor *[insert amount of daily late payment]* per day as liquidated damages for each day after the date of completion specified in this section when work remains unfinished.
3. Subcontractor will use all means necessary to discover any defects in the work of other contractors if its work depends on the proper, workmanlike, or accurate performance of any work by another contractor. Subcontractor must report any defects to Contractor, in writing, before proceeding with its work. If necessary or applicable, Subcontractor must allow Contractor a reasonable time to remedy any defects. If Subcontractor’s work is delayed by Contractor’s requirement of time to remedy defects, the work completion date may be extended as otherwise detailed in this agreement.
4. Subcontractor will not claim additional work unless pursuant to a written order from Contractor. Subcontractor will notify Contractor of these claims in writing before requesting payment. Unreported additional work claims will be considered abandoned.
5. Subcontractor will not alter any work or materials shown or described in the drawings and specifications, unless pursuant to a written order from Contractor. Contractor will determine the value of work and materials added, omitted, or altered and adjust the contract price accordingly. *[Consider adding a provision regarding arbitration of valuation disputes.]*

6. Subcontractor must supply an adequate and sufficient number of skilled workers and materials of proper quality and quantity for the completion of its work. If, at any time, Subcontractor refuses or neglects to supply a sufficient number of workers or adequate materials, fails in any way to deliver work with promptness and diligence or violates any provision of this agreement, Contractor has the right, after *[insert number of notice days]* days of written notice to Subcontractor, to provide any labor and/or materials and to deduct these costs from any money due or that may become due to Subcontractor. In addition, Contractor will be at liberty to terminate Subcontractor's right to complete the work, to enter the premises and take possession of all materials and appliances related to Subcontractor's work and to contract with another party or employ other persons to finish the work and/or provide materials for it. Subcontractor will not be entitled to receive any payment under this contract if its right to complete the work is terminated until the work is completed by Contractor or a third party. Once the work is complete, Subcontractor may receive the balance of the payment specified above, less any expenses Contractor incurred to complete the work without Subcontractor. Subcontractor must reimburse Contractor for any expenses that exceed the balance of Subcontractor's outstanding payment balance.
7. Subcontractor may not assign or transfer this contract, in full or in part, without Contractor's consent.

### **Safety**

1. Subcontractor agrees that the safety of workers engaged in the work under this agreement is solely its responsibility. Subcontractor specifically agrees to take appropriate precautions to ensure the safety of its own employees, whose safety might otherwise be jeopardized by any risk of harm relating to or arising out of Subcontractor's work.
2. Subcontractor must comply with all applicable safety federal, state and local laws, rules, regulations, statutes, ordinances and directives ("Laws") that are in force or that may come into force during the work as they relate to Subcontractor's operations, materials and personnel.
3. Subcontractor will apply to obtain all necessary permits at its own cost and expense and conform to applicable Laws in force in the locality where its work must be performed.
4. Subcontractor also agrees to comply with all applicable safety standards. If requested, Subcontractor will submit to Contractor its safety program for review.
5. At all times, Subcontractor will provide sufficient, safe and proper facilities to allow Contractor, or an authorized representative, to inspect Subcontractor's work and performance. Upon request, Subcontractor will also produce all the documents necessary to evaluate the quality of the materials used in its work.
6. Subcontractor must submit copies of all accidents or injury reports to Contractor as soon as practicable or prescribed by applicable Laws.

### **Indemnity**

1. The work performed by Subcontractor shall be at its exclusive risk. To the fullest extent permitted by law, Subcontractor will defend, indemnify and hold harmless all indemnified parties from any and all claims for bodily injury and property damage, including the loss of use of property, which arise solely from the work performed, materials furnished, or services provided by Subcontractor under this agreement.

Indemnified parties include the Contractor, Owner (if different from Contractor), affiliated companies, partners, joint ventures, representatives, members, designees, officers, directors, shareholders, employees, agents, successors and their assigns. *[Note for this paragraph, prefer when indemnified parties only include the parties the policyholder has a direct written contract with, in this example, the Contractor.]*

2. Subject to applicable law or court order, Subcontractor is not obligated to indemnify and defend Contractor or Owner (if different from Contractor) for claims due to the sole negligence or willful misconduct of the indemnified parties.
3. Any obligations assumed pursuant to this agreement will 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 agreement. *[This paragraph will need modified or deleted, depending on the jurisdiction.]*

## Insurance

1. Prior to the beginning of the work, Subcontractor must provide to Contractor certificates of insurance showing that Subcontractor has coverage for itself and its employees, agents. Subcontractor's insurance must provide adequate coverage for any workers' compensation obligations, employers liability, general liability *[when applicable Contractor may list commercial umbrella liability]* and automobile liability. If any of these policies are terminated, Subcontractor must provide to Contractor certificates of insurance showing replacement coverage.
2. All coverage must be placed with insurance companies duly admitted in *[state or desired licensing jurisdiction]* and must be acceptable to Contractor.
3. All Subcontractor insurance carriers must maintain an AM Best rating of "A-" or better.
4. Subcontractor's policy must name Contractor as an additional insured. Coverage must be afforded to the Contractor as an additional insured, regardless of whether a claim is in litigation.
5. Each certificate of insurance must provide that the insurer must give to Contractor written notice of cancellation or termination of Contractor's coverage.
6. Subcontractor must secure a workers' compensation insurance policy. The workers' compensation policy must cover all of Subcontractor's work and performance and provide coverage for all employees, executive officers, sole proprietors, partners and members of a limited liability company, in the amounts required by all applicable laws.
7. Subcontractor must secure an employers liability insurance policy to cover the damages that become due in the event of bodily injury, occupational sickness or disease, or death of Subcontractor's employees. This policy must be written with limits of \_\_\_\_\_ *(enter limit for each accident, minimum of: \$500,000 is standard)* (\$) \_\_\_\_\_ *(enter limit for each accident policy, minimum: \$500,000 is standard)* (\$) \_\_\_\_\_ *(enter limit for each disease, minimum: \$500,000 is standard)* (\$) \_\_\_\_\_ *(enter limit per disease per each employee, minimum: \$500,000 is standard)* (\$) \_\_\_\_\_ *(enter limit per disease per each employee, minimum: \$500,000 is standard)* (\$) \_\_\_\_\_ per disease, per each employee.
8. Subcontractor must secure a commercial general liability insurance policy to cover the damages that become due in case of bodily injury, property damage and personal or advertising injury arising out of or related to:
  - All Subcontractor's ongoing operations and premises;
  - All Subcontractor's products and completed operations;
  - All liability or responsibility assumed by the Subcontractor in the Indemnity section of this agreement;
  - All liability assumed in a business contract;
  - Contractor as an additional insured; and

In addition, Subcontractor must provide Contractor proof of insurance with a certificate of insurance and additional insured endorsement on ISO form CG 2010 and CG 2037 (or substitute forms providing equivalent coverage). Subcontractor is responsible for maintaining this insurance policy.

The coverage available to Contractor, as additional insured, in the commercial general liability policy must be at least:

- *[enter minimum coverage amount per occurrence, preferred minimum \$500,000]* for each occurrence;
  - *[enter minimum aggregate amount, preferred minimum \$1 million]* for general aggregate;
  - *[enter minimum amount for products/completed operations aggregate, preferred minimum \$1 million]* for products/completed operations aggregate; and
  - *[enter minimum for personal and advertising injury limits, preferred minimum \$500,000]* for personal and advertising injury limits.
9. Subcontractor must secure an automobile liability insurance policy to cover the damages that become due in case of bodily injury, death of a person, or property damage arising out of ownership, maintenance or use of any motor vehicle or trailer owned, hired, leased, used on behalf of, or borrowed by Subcontractor. The policy must also include coverage for any equipment subject to motor vehicle laws. Business auto liability insurance must be written in the amount of not less than *[enter minimum required coverage per accident, for example, \$500,000]* for each accident.
10. Subcontractor must secure an umbrella liability insurance policy *[enter minimum limit, prefer \$1 million or NO umbrella]* to cover the damages that become due in case of bodily injury, property damage and personal and advertising injury with at least the same terms and conditions as the policies mentioned above.

## CONTRACTOR RESPONSIBILITIES

Contractor, in consideration of the provisions contained in this subcontractor agreement, agrees with Subcontractor as follows:

1. Contractor will engage Subcontractor to provide the materials and to do the work specified in this agreement according to terms and conditions specified in this agreement.
2. Contractor will pay to Subcontractor the full payment agreed upon for Subcontractor's work if the work is completed to Contractor's satisfaction according to the terms of this agreement. The full payment agreed upon for Subcontractor's work is *[enter payment amount for completed work]*. In addition, Contractor will pay Subcontractor *[enter payment amount for materials used]* for materials.

Contractor will make payments on or about *[enter number of days]* day(s) of each month at a rate of *[enter percentage number]* percent of the value of the work completed during the previous month as determined by Contractor and the remaining *[enter percentage number]* percent within *[enter number of days]* days after accepting Subcontractor's completed work.

No payments made under this contract will operate as Contractor's admission that Subcontractor has complied in full or in part with this agreement. No payment made under this contract prevents Contractor from taking any action to recover damages from Subcontractor for any violation of this agreement or for substandard quality of work performed or materials used.

## ADDITIONAL PROVISIONS

1. The time requirements of this contract may be extended by written agreement of the parties, if Subcontractor is delayed by acts of the owner or Contractor, required alterations, or damage occurring from fire or other casualty.
2. No non-written order, objection, claim, or notice of either party to the other will be of effect or binding and no evidence of such order, objection, claim, or notice will be introduced in any legal or equity lawsuit. Both parties, Contractor and Subcontractor, agree to execute and deliver in writing all communications that affect and bind the other. Any non-written communication between the parties will be considered as immaterial and nonbinding.
3. No provision of this contract can be waived or interpreted by reason or any other act. A waiver from this contract or any of its provisions is valid only if it is an express waiver, agreed to and interpreted by the parties in writing.
4. This agreement sets forth the full and entire understanding of the parties regarding the Subcontractor's work. This Agreement may be modified, but only in writing, upon the mutual consent of the parties.
5. If any provision of this agreement or any application of the agreement is found to be contrary to law, then such provision or application shall not be deemed valid, except to the extent permitted by law, but all other provisions and applications of this agreement shall continue in full force and effect.
6. The parties may execute this agreement in several counterparts, including electronically, and each counterpart shall be deemed an original for all purposes, including proof of the terms.
7. Each of the persons signing below represents and warrants that s/he or it is signing with full and complete authority to bind the party on whose behalf s/he or it is signing.

## PROJECT LOCATION(S)

Project # and/or address:

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## SIGNATURES

This agreement is entered into by the parties listed below, effective as of the date specified above.

### CONTRACTOR

*[Company or individual name that is hiring the Policyholder]*

*[Street address]*

*[City, state, zip code]*

### SUBCONTRACTOR

*[Policyholder's company or individual name]*

*[Street address]*

*[City, state, zip code]*

Print name: \_\_\_\_\_ Print name: \_\_\_\_\_

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_