

SOUTH DAKOTA SUBCONTRACTOR AGREEMENT

This South Dakota Subcontractor Agreement ("Agreement") made and entered into this _____ day of _____, 20__ by and between:

I. THE PARTIES

Contractor: _____ ("Contractor") of _____,
City of _____, State of South Dakota with, Zip Code
_____, AND

Subcontractor: _____ ("Subcontractor") of
_____, City of _____, State of South
Dakota with Zip Code _____.

The Contractor and Subcontractor are referred to herein as the "Parties" and agree as follows:

II. The Client. The Subcontractor acknowledges that all work carried out under this Agreement shall be in accordance with the most recent agreement(s) ("Prime Contract") made between the Contractor and Client and identified as:

Client: [CLIENT'S NAME] at [MAILING ADDRESS] (hereinafter referred to as "Client").

III. Provided services. It is understood that the subcontractor will provide the following services: [SERVICES PROVIDED] ("Services").

Services: _____

Services: _____

Services: _____

Services: _____

IV. Responsibilities of Subcontractors. When performing their Services, the Subcontractor shall be accountable for providing the following: (select all that apply)

- ☐ - **Labor.** This includes employees, subcontractors, and any other individuals or agents.
- ☐ - **Materials.** This includes but is not limited to all supplies and products.
- ☐ - **Equipment.** This includes, but is not limited to, machinery, accessories, and devices.
- ☐ - **Travel.** This includes, but is not limited to, ensuring that the above-mentioned Responsibilities are performed at the specified location as listed in section V
- ☐ - **Other.** [OTHER].

It is not the responsibility of the Subcontractor to provide any of the items not selected in this contract unless otherwise stated in it.

V. Location. Services performed by the Subcontractor will be performed at: (select one)

- ☐ - A **Specific Address** of: [ADDRESS] ("Location").
- ☐ - **Determined at a later time** by the Contractor ("Location").

VI. Term: This Agreement shall commence on MM/DD/YYYY and shall terminate on MM/DD/YYYY.

VII. Completion. It shall be the responsibility of the Subcontractor, unless otherwise stated in this Agreement, to provide the Services : (select one)

- ☐ - By the Specific date of MM/DD/YYYY.
- ☐ - Compliant with industry standards.
- ☐ - Other: [OTHER]

VIII. Compensation: The Contractor shall pay the Subcontractor [Insert Amount] for the services performed under this Agreement. Payment will be made: (select one)

- ☐ - \$[AMOUNT] for the Services ("Payment").
- ☐ - At an hourly rate of \$[AMOUNT] per hour ("Payment").
- ☐ - Other. [OTHER] ("Payment")

The Contractor shall present the Subcontractor's claim to the Client or other responsible party if the Subcontractor asserts a claim that involves, in whole or in part, acts or omissions that are the responsibility of the Client or another person for whom a claim may be made, including but not limited to claims for failure to pay, an extension of time, impacts, delay damages, or extra work, provided the Subcontractor presents to the Contractor competent supporting evidence. When the Contractor submits the Subcontractor's claims to the Client or other responsible party(ies), the Subcontractor must fully cooperate with the Contractor in all of the steps the Contractor takes to pursue the claim. The Subcontractor must also hold the Contractor harmless and pay all costs, including attorney fees, incurred by the Contractor as a result of that submission. The Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such a claim.

IX. Payment Method. Payment shall be made by the Contractor to the Subcontractor as follows: (choose one)

- ☐ - Immediately upon completion of the Services to the satisfaction of the Contractor.
- ☐ - Within {#} business days after completion of the Services to the satisfaction of the Contractor.
- ☐ - Shall be paid on a ☐ weekly ☐ monthly ☐ quarterly ☐ [OTHER] basis. If the Subcontractor completes the Services to the satisfaction of the Contractor, before the full amount or balance has been fully paid, any remaining amount shall be payable immediately.
- ☐ - Other: [OTHER].

Satisfaction of the completed Services by the Subcontractor shall be completed within a reasonable time period. "Satisfaction" shall be a determination, in good faith, made by the Contractor and in accordance with commonly accepted industry standards.

If the Contractor, Client, or other responsible party delays in making any payment to the Contractor, from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined in relation to relevant circumstances, but shall in no event be less time than required for Contractor, Contractor's sureties, and Subcontractor to pursue a conclusion to their legal remedies against the Client or other responsible party to obtain payment, including, but not limited to, mechanics' lien remedies.

X. Subcontracting. The Subcontractor shall have: (select one)

- - Right to Subcontract: Subcontractor is permitted to subcontract all or a portion of the Services permitted by this Agreement. Each subcontractor must sign a written agreement with the subcontractor that is equivalent to or the same as the following sections of this agreement and that has been approved in writing by the contractor.
- No Right to Subcontract: The Services authorized by this Agreement may not be subcontracted by Subcontractor in whole or in part.

XI. Assignment. Subcontractor ☐ **shall** ☐ **shall not** have the right to assign any rights under this Agreement or any part of the Services issued herein. Subject to the foregoing, this Agreement shall be binding upon the parties' heirs, executors, successors and assigns.

XII. Insurance. The Contractor ☐ **shall** ☐ **shall not** require the Subcontractor, along with each of its subcontractors, to have insurance set forth in this Section under the following terms and conditions before commencing Services:

A.) **Coverage Types:** (select all that apply)

☐ - **General Liability Insurance:** Subcontractor shall carry minimum primary General Liability Insurance for the following amounts:

- a.) \$[AMOUNT] Combined Single Limit: Property Damage + Bodily Injury;
- b.) '[AMOUNT]' Personal Liability Injury;
- c.) \$[AMOUNT] Aggregate for Operations Finished work; and
- d.) \$[AMOUNT] General Aggregate (This will not apply to the services rendered by the Subcontractor).

☐ - **Vehicle Liability Insurance:** a minimum of \$\$[AMOUNT] minimum required insurance policy for all owned, hired, and non-owned vehicles of the Subcontractor covering combined single limit liability for each accident resulting in injury and/or property damage.

☐ - **Excess Liability Insurance:** \$[AMOUNT] minimum required insurance policy for anything other than General Liability or Automobile coverage.

The Client, the Contractor, and any other entity that the Prime Contract requires the Contractor to name as an additional insured must be named as additional insureds under the general liability insurance required by this Section, and any coverage provided to the additional insureds will function as primary insurance. Unless otherwise required by law, any additional insurance that the Client or Contractor maintains shall be excess insurance and shall not be used to satisfy the obligation of the Subcontractor's primary or excess insurance carrier to defend or indemnify. The above-required excess insurance must also provide Client and Contractor with additional insured protection. This Section may not, under any circumstances, be interpreted as requiring that additional insured insurance coverage be offered to a greater extent than is permitted by applicable state statutes or public policy.

B.) **Certificates of Insurance.** Before providing any Services, Contractor must receive certificates of insurance, along with the necessary additional insured, other endorsements, and subrogation waivers.

C.) **Maintenance/Cancellation of Insurance.** Any required insurance coverage cannot be canceled or reduced without thirty (30) days' written notice to the Contractor. This notice can be sent by the Subcontractor's insurance carrier, insurance broker, or by the Subcontractor himself.

D.) **Waiver of Subrogation.** The subcontractor waives all rights against the contractor, client, and other subcontractors.

E.) **Exclusions.** For the limits of liability indicated, the above insurance coverages are provided by or on behalf of the Subcontractor, covering bodily injury, personal injury, and property damage. In addition to the premises and operations, coverage includes products and completed operations, contractual liability, construction means, methods, techniques, sequences,

and procedures, including safety and field supervision. Such coverage shall not be subject to any of the following limiting or exclusionary endorsements: clauses preventing coverage from continuing after a certain period of time, clauses preventing coverage from continuing due to insured vs insured cross-lawsuits, clauses excluding coverage for assumed liability, subsidence or earth movement, prior acts or work, action over - prohibiting indemnity for passive acts of Contractor contributing to injury of a Subcontractor's employee, contractual limitation - eliminating cover for assumed liability

XIII. Resolution of Disputes. The parties hereto agree that, in the event of a disagreement regarding the terms of this Agreement or the performance of any of the parties hereto, the disagreement shall be resolved by the payment of one of the following expenses by each party in an equal share: (select one)

☐ - **Binding Arbitration** as regulated under the laws in the State where the Services are being performed. It is agreed that the arbitrator's final decision will be accepted by the parties.

☐ - **Non-Binding Arbitration** as regulated under the laws in the State where the Services are being performed. The parties have the right to not accept the decision of the arbitrator; in such event, the dispute shall be solved by litigation.

☐ - **Mediation** as regulated under the laws in the State where the Services are being performed. It is agreed that the parties will engage in good faith negotiations through a neutral mediator in an attempt to resolve the dispute. If a resolution to the dispute cannot be made by mediation, the parties agree to enter into: (select one)

☐ - **Binding Arbitration**

☐ - **Litigation**

In the event of a dispute, regardless of whether any of the above are checked, the Contractor is entitled to take any steps necessary by law to enforce payment of monies due, including any steps required by law to preserve or secure any lien on property. According to State law of South Dakota, the Contractor may record one or more lien certificates in the appropriate Registry of Deeds and take legal action to enforce and preserve any lien.

If the Services cannot begin or end due to events beyond the control of the Contractor, such as but not limited to, the Location's unreadiness, a lack of building materials, or any other circumstances deemed outside the control of the parties in this Agreement, completion as determined under this Section may be modified.

XIV. Termination. Throughout the term of this Agreement, (select one.)

☐ - **No Rights to Terminate:** This Agreement cannot be terminated by either party without mutual agreement in writing.

☐ - **Contractor ONLY Has the Option to Terminate:** Contractor may, at any time and for any reason, terminate Subcontractor's Services hereunder at the Contractor's convenience with at least [#] business day(s) notice. In the event of termination for convenience, Subcontractor shall recover only the actual cost of work completed to the date of termination, in approved units of work or percentage of completion, plus [#]% of the actual cost of the completed work for overhead and profit.

- **Subcontractor ONLY Has the Option to Terminate:** Subcontractor may terminate the Services provided hereunder at any time and for any reason by providing the Contractor with written notice at least [#] business day(s) in advance. In the event of termination for convenience, Subcontractor shall recover only the actual cost of work completed to the date of termination, in approved units of work or percentage of completion. Subcontractor shall not be entitled to any claim or lien against the Contractor, Owner, or anyone else for any additional compensation or damages in the event of such termination.

☐ - **Both Parties Have the Option to Terminate:** Contractor or Subcontractor may, at any time and for any reason, terminate this Agreement for convenience with at least [#] business day(s) notice. If the contract is terminated for convenience, the subcontractor is only entitled to compensation for the work that has already been done as of the termination date, measured in approved units of work or as a percentage of completion.

XV. Claims. Any party has the right to send written notice of any claim made by the Contractor or Subcontractor through certified mail with return receipt if it relates to a Change Order, any problem with this Agreement, the performance of Services, or the provision of Services. The parties shall have [#] business day(s) to respond to any written claim made by either party under this Agreement before seeking a resolution in accordance with Section XIII's instructions.

XVI. Change Orders. Any modification or departure from the aforementioned Services or other contractual requirements that necessitates a revision of this Agreement shall be documented in a change order ("Change Order") and executed and attached to this Agreement.

XVII. Entire Agreement. This Agreement represents the entire agreement between the Contractor and Subcontractor. This Agreement supersedes any prior written or oral representations. Subcontractor and its subcontractors, suppliers and/or materialmen are bound to the Contractor by the prime contract and any contract documents incorporated therein to the same extent as Contractor is bound to the Client insofar as they related in any way, directly or indirectly, to the Services provided and covered in this Agreement.

XVIII. Time. This Agreement's timeline is crucial. The Subcontractor shall comply with the Contractor's progress schedules, including any alterations made by the Contractor in the scheduling of Services, and shall provide the Contractor with scheduling information in a format acceptable to the Contractor. In order to avoid delaying or

impairing the performance of other contractors, subcontractors, suppliers, and/or materialmen, the subcontractor must coordinate its Services with those of each of the aforementioned parties.

XIX. Delays. Subcontractor will indemnify Contractor and hold Contractor harmless for any damages, claims, demands, liens, stop notices, lawsuits, attorneys' fees, and other costs or liabilities imposed on Contractor as a result of any delays by Contractor or any other contractors, subcontractors, suppliers, and/or materialmen on the entire project. The Contractor may choose to add to the Subcontractor's work and deduct related costs as one of his or her remedies for the Delay by the Subcontractor.

XX. Inspection of Services. Subcontractor shall make the Services accessible at all reasonable times for inspection by the Contractor. Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Subcontractor's Services and give prompt notice of any defect therein. Subcontractor assumes full responsibility to protect the work done hereunder until final acceptance by the Contractor or any authorized third (3rd) party.

XXI. Labor Relations. The subcontractor must uphold labor policies that are compliant with the contractor's instructions and applicable state laws.

XXII. Indemnification. The Subcontractor shall indemnify and hold harmless the Contractor and its officers, employees, and agents from and against any and all claims, damages, or expenses arising from or in connection with the Subcontractor's performance of services under this Agreement. This indemnification shall apply to claims arising both during the term of this Agreement and after its termination. The indemnity shall be applicable regardless of any passive negligence on the part of the Client, the Contractor, their agents, or employees; however, the Subcontractor shall not be obligated to indemnify any party for claims resulting from the Client's or the Contractor's active negligence, sole negligence, willful misconduct, or claims solely attributable to the designs submitted by such parties. The intention of the foregoing is to provide the maximum defense and indemnity obligations permitted by the Subcontractor by law, to the extent that State law restricts the defense or indemnity obligations of the Subcontractor to Contractor or Client. Any insurance requirements or other provisions of this Agreement shall not limit the indemnity described in this Section.

XXIII. Warranty. Subcontractor guarantees to Client and Contractor that, unless otherwise specified, all materials and equipment furnished will be brand-new and that all services rendered under this Agreement will be completed, at the very least, in accordance with industry standards. Any work that doesn't follow these specifications, including substitutions that weren't properly approved and authorized, may be deemed flawed. Any other warranty or remedy required by law or the Prime Contract shall be in addition to and not be limited by the warranty provided in this Section.

XXIV. Required Licenses. All parties to this Agreement, including but not limited to the Contractor, Subcontractor, other subcontractors, and all parties' direct or indirect employees and agents, shall possess the necessary licenses as required by the laws of the State in which they are engaged in their line of work. All parties to this Agreement

shall be subject to the regulation of their respective licensing boards, which have the authority to look into any complaints made by third parties.

XXV. Confidentiality. The Subcontractor shall maintain the confidentiality of all confidential information of the Contractor and shall not use or disclose such information except as required to perform services under this Agreement.

A.) **Prime Confidential Information.** The following shall constitute Confidential Information of the Contractor and should not be disclosed to third (3rd) parties: the deliverables, discoveries, ideas, concepts, software [in various stages of development], designs, drawings, specifications, techniques, models, data, source code, source files, object code, documentation, diagrams, flow charts, research, development, processes, procedures, "know-how", marketing techniques and materials, marketing and development plans, customer names and other information related to customers, price lists, pricing policies and financial information, this Agreement and the existence of this Agreement, the relationship between the Contractor and Subcontractor, and any details of the Service under this Agreement. Subcontractor agrees not to make reference to or use the Contractor's or its names, images, or logos ("Identity"). Subcontractor will not, directly or indirectly, use or refer to Contractor or their Identity in connection with any other third (3rd) parties.

B.) **Non-Disclosure.** The parties hereby agree that the Receiving Party shall not use, commercialize, or disclose Confidential Information to any person or entity during the term of this agreement or at any time thereafter, save as expressly provided herein or in a separate writing signed by the Disclosing Party. The Receiving Party shall return to the Disclosing Party all Confidential Information, including all notes, data, reference materials, sketches, drawings, memoranda, documentation, and records that in any way incorporate Confidential Information, upon termination or at any time upon request from the Disclosing Party.

C.) **Right to Disclose.** The Subcontractor guarantees that it has the full and unrestricted right to disclose any information, know-how, or data to the Contractor and that the Contractor shall have the full and unrestricted right to use and publish any such information, know-how, or data as it sees fit without incurring legal liability to third parties. Contractor shall be informed of any limitations on the use of information, knowledge, or data disclosed by Subcontractor.

XXVI. Notices. All notices under this Agreement must be in writing and sent to the recipient's address, which is provided here. Any such notice may be delivered in person, by overnight courier, certified mail with return receipt, or first class pre-paid letter, and will be deemed to have been received (1) when delivered in person, at the time of delivery; (2) when delivered by overnight courier, 24 hours after the date of delivery to courier with evidence from the courier; (3) when delivered by certified mail with return receipt, the date as verified on the return receipt; and (4) when delivered by first class pre-paid letter.

XXVII. Injunctive Relief. Subcontractor understands that it would be challenging to fully make up for any damages brought on by any breach of this Agreement for the Client and/or Contractor. In order to enforce these provisions, the Client and/or Contractor shall be entitled to both temporary and permanent injunctive relief in the event of any breach of this Agreement.

XXVIII. Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

XXIX. Independent Contractor. No term, covenant, condition, or provision of this Agreement shall be construed as creating an employer-employee, master-servant, or principal-agent relationship between the Contractor or Client and the Subcontractor and/or any of the Subcontractor's employees. The relationship between the Contractor and the Subcontractor shall be deemed to be that of an independent contractor, as attested to by all parties to this Agreement.

XXX. Force Majeure. When a party fails to carry out its obligations under this Agreement as a result of events beyond its reasonable control, such as acts of State or governmental authorities, terrorist acts, natural disasters like fires, storms, and floods as well as earthquakes, accidents, and protracted energy shortages, neither party shall be held responsible. Any date specified herein shall, in the event of such a delay, be extended by the necessary amount of time by the Contractor and the Subcontractor. The Contractor may terminate this Agreement by giving the Subcontractor written notice if the delay continues for more than thirty (30) days.

XXXI. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota.

XXXII. Attachments. Any plans, schematics, drawings, details, or other information that the Contractor deems necessary to help the Subcontractor with the aforementioned Services may be attached. Any submitted attachment will become a part of the entire Agreement.

XXXIII. Additional Provisions. [ADDITIONAL PROVISIONS]

SIGNATURE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Contractor's Signature _____ Date _____

Print Name _____

Company Name _____

Subcontractor's Signature _____ **Date** _____

Print Name _____

Company Name _____