

## HVAC Subcontractor Agreement

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## **General Information**

### **HVAC Subcontractor Agreement**

This HVAC Subcontractor Agreement is between a Contractor and a Subcontractor who is hired to perform heating, venting and air conditioning (HVAC) services. It is important that this agreement be set out in writing and clearly details the services the Subcontractor will perform (i.e., air conditioner or heating repairs or replacements). This agreement sets out the specific terms of the arrangement including the scope of Subcontractor's work, the hours when work can be performed and when the Subcontractor will be paid.

It is important that this type of services agreement be set out in writing rather than by oral agreement. A written HVAC Subcontractor Agreement will be useful in the event there are misunderstandings between the parties as to the specific services the Subcontractor will provide.

## Instructions and Checklist

### HVAC Subcontractor Agreement

- Both parties should read the agreement carefully.
- Insert all requested information in the spaces provided on the form.
- This form contains the basic terms and language that should be included in similar agreements.
- This form includes exhibits that should be attached and incorporated as part of this agreement.
- This agreement includes an arbitration provision. If you prefer to settle any disputes through the court system, simply remove this language from the “Dispute Resolution and Arbitration” provision and replace with applicable language.
- Both the Contractor and Subcontractor must sign the Agreement.
- Both parties should retain either an original or copy of the signed agreement.
- All legal documents should be kept in a safe location such as a fireproof safe or safe deposit box.

## Step-by-Step Instructions HVAC Subcontractor Agreement

The following instructions will walk you through each provision to help you fully understand the terms of your agreement. The numbers below correspond with the respective provision within the Agreement.

**Heading:** Fill in the date the Agreement is entered into and the name of both Owner and Contractor.

**Section 1: Scope of Work:** Describe in detail the HVAC services the Subcontractor will provide and the specific hours in which the Contractor may work.

**Section 2: Quality.** Specify the quality of the work and that Subcontractor will guarantee that all materials and work are done according to industry standards and in a workmanlike manner. Contractor also agrees to use experienced HVAC technicians for the project.

**Section 3: Payment.** Specify the exact amount of any advance payment to the Subcontractor and when other payments will be made.

**Section 4: Insurance.** Specify the type of insurance that both Subcontractor and Subcontractor must carry.

**Section 5: Warranty and Indemnity.** Subcontractor warrants all materials and workmanship for a period of five years and any defects will be repaired or replaced at no cost to Contractor. Specify otherwise if this is not the case.

**Section 6: Term and Termination.** Fill in the term of the agreement and options for termination and the effects if the agreement is terminated.

**Section 7: Expenses.** Subcontractor agrees to bear all reasonable out-of-pocket expenses and costs. Specify otherwise if this is not the case.

**Section 8: Assignment.** The Subcontractor may not assign any of its duties under this contract to another without the prior written consent of Contractor.

**Section 9: Miscellaneous.** Specific provisions related to waiver, notices, governing law, agreement content, severability and counterparts. If these provisions are subject to change, specify the particulars.

**Section 10: Dispute Resolution and Arbitration.** The parties agree to settle any disputes by arbitration according to the rules of the American Arbitration

Association. If the parties desire to settle disputes through the court system, specify the particulars in writing.

**Signature Blocks.** Both Contractor and Subcontractor must sign this agreement.

**Schedule 1/Covered Equipment.** Sets out a detailed description of the equipment the parties will provide for the project.

**Schedule 2/Scope of Work.** Set out a detailed description of the specific HVAC work the Subcontractor will perform under this agreement.

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## HVAC SUBCONTRACTOR AGREEMENT

**THIS HVAC SUBCONTRACTOR AGREEMENT** (the "Agreement") is made as of this **[date]** day of **[month]**, 2011 (the "Agreement Date") by and among

**[name]**, of **[address]** (the "Contractor"), and

**[name]**, a **[address]** corporation (the "Subcontractor")

### RECITALS

WHEREAS, Contractor has obtained contract from the Owner for the maintenance of the equipment, whose description is stated in **Schedule 1-Equipment**; and

WHEREAS, Contractor desires certain maintenance work to be carried out for the equipment as per the **"Scope of Work"** specified in **Schedule 2** and Subcontractor has agreed to perform such work for the equipment, on the terms and conditions mentioned herein below;

**Now, therefore, the Parties agree as follows:**

#### **1. SCOPE OF WORK**

- 1.1 Subcontractor will perform the work as per specifications mention in **Schedule 2-Scope of Work**.
- 1.2 Subcontractor will provide the service during normal business hours Monday thru Friday \_\_\_ am to \_\_\_ pm.
- 1.3 This contract does not cover losses, damages due to external causes not limited to unauthorized service rendered by other than Subcontractor, power loss/interruption, plumbing, water, foliage, acts of God or any other situation out of the Subcontractor's control.
- 1.4 This agreement is a maintenance service contract for the purpose of making only normal adjustments to the equipment. A seasonal start up and shut down with maintenance inspection including filter changes will be performed as needed. Filters for equipment shall be supplied by the Contractor.
- 1.5 **Efficiency Test.** Subcontractor will, at Contractor's request, option and expense, perform a yearly efficiency test. The test will be performed after any repairs or adjustments have been completed pursuant to this contract. Upon completion of the test, Subcontractor will provide Contractor with a form listing the values for carbon monoxide, carbon dioxide or oxygen content, the net stack temperature, and the smoke level, as appropriate, and the steady-state efficiency (expressed in a percentage) determined there from.
- 1.6 **Repair Parts.** Parts will be supplied at no cost under the manufacturer's warranty as long

as the manufacturer's warranty is in effect. If the cost of repair is more than the cost of a new appliance, repair will not be performed under this Agreement.

1.7 **Exclusions.** Items not covered under the Scope of Work are:

- a. Plumbing, leaking or damage to valves, Copper piping, pans, sheetrock, flooring, walls, furniture, landscaping, household furnishings, etc.;
- b. Light Bulbs, timers, programmable thermostats, pumps, sensors, transmitters or receivers.
- c. Central Air Conditioning/Heating/Appliances: (i) sealed system parts (compressor, evaporator, condenser, and piping) beyond the original manufacturer's warranty; (ii) defrost boards, electric heaters, logic boards, circuit boards, expansion valves, air cleaning devices condensation pumps, humidifiers/dehumidifiers change over valves, zone valves, damper motors and controllers; (iii) freon; (iv) metal cabinets, burners, gas or oil heat equipment or components and finishes; (v) internal heaters, hinges, contactors, motors, capacitors, switches, economizers, relays, thermostats, batteries, wiring, glass shelving, pads, duct work, rewiring due to shortages or sabotage by others.
- d. Electrical Burglar alarms, panels, inadequate service, underground wiring, circuit breakers, disconnects, lighting fixtures, outside panels, attic & ceiling fans, switches & outlets, shorts, wall outlets & lighting.
- e. Gas or water leaks or repair thereof, insulation and duct work, electrical service and control wiring failure, failures from inadequate power, plumbing and or leaks, scaling, corrosion, leakage or contamination of coils, condenser, evaporator or, refrigeration lines, recording or instrument lines, cabinet or condensate pans & lines, moving or relocating equipment, heating controls or burners.
- f. This contract does not cover preexisting conditions.

2. **QUALITY**

- 2.1 Subcontractor shall use trained and experienced workmen having all necessary skills needed to satisfactorily complete the work. Subcontractor shall finish the work on schedule.
- 2.2 Subcontractor shall guarantee all material to be as specified.
- 2.3 Subcontractor shall perform the work in a workmanlike manner according to industry standard practices. Any deviation from agreed specifications, involving extra costs, will be executed only after written confirmation of Contractor is obtained in advance.

3. **PAYMENT**

- 3.1 Contractor shall pay an advance payment of \$ \_\_\_\_ to Subcontractor \_\_\_\_ weeks prior to the commencement of the work. Another payment of \$ \_\_\_\_ will be paid, upon completion of 50% of the work. The balance of \$ \_\_\_\_ will be paid upon full and satisfactory completion of the work.



3.2 Any pre-approved additional cost will be paid as per agreement between the Parties.

#### 4. **INSURANCE**

4.1 Prior to the execution of any work, Subcontractor will obtain General Liability Insurance and Workers' Compensation Insurance and will provide Certificates of Insurance to Contractor, with Contractor named as Certificate Holder.

#### 5. **WARRANTY & INDEMNITY**

5.1 Subcontractor warrants the quality of all materials and workmanship for a period of five years. Any defects in the materials or workmanship will be repaired or replaced at no cost to Contractor.

5.2 Subcontractor shall defend, indemnify and hold harmless Contractor against all claims, liabilities, expenses, costs, loss or damage of whatsoever nature (including legal costs on a full indemnity basis incurred by Contractor) brought against, suffered or incurred by Contractor, and defend any suit brought against Owner, arising out of or in connection with this Agreement, including without prejudice to the generality of the foregoing:

- a. Any breach of the terms and conditions of this Agreement by the Subcontractor;
- b. Any act, omission, fraud and negligence or default whatsoever of Subcontractor, employees or agents employed by Subcontractor to perform its obligations hereunder;
- c. Any wrongful, incorrect, dishonest, criminal, fraudulent or negligent work, misfeasance, bad faith, disregard of its duties and obligations hereunder, service, act or omission of /by Subcontractor or any of its personnel.

#### 6. **TERM & TERMINATION**

6.1 **Term.** This Agreement shall commence from the Commencement Date specified in Schedule 1, and continue for a period of \_\_\_ years, unless terminated earlier by the Contractor.

6.2 **Termination.** Contractor shall have the option to terminate this Agreement,

- a. in the event that the Subcontractor fails to complete any part of the work on the deadlines agreed with Contractor, and as agreed in Schedule 1;
- b. in the event that the Subcontractor is in material breach of any of its covenants under this Agreement and where capable of remedy, fails to remedy such breach within fifteen (15) days of being notified by Contractor to remedy the breach.

6.3 Without prejudice to any other rights or remedies it may have, Contractor shall have the right at any time to terminate the Agreement forthwith by serving a written notice of termination on Subcontractor:

- a. Subcontractor becomes insolvent or ceases to trade or enters into any composition with its creditors; or
- b. A bankruptcy order is made against Subcontractor; or
- c. A Receiver or an Administrative Receiver is appointed in respect of any of Subcontractor 's assets; or
- d. An order to wind up Subcontractor's business is made or a Liquidator is appointed in respect of Subcontractor (otherwise than for the purposes of reconstruction or amalgamation).
- e. If Subcontractor is prevented from providing the services by any court, other judicial, quasi-judicial, governmental orders, for any reasons attributable to Subcontractor.

6.4 **Effect of Termination.** Notwithstanding any other rights and remedies provided elsewhere in the Agreement, on termination of this Agreement with effect from the effective date of termination and thereafter:

- a. Neither Party will represent the other Party in any of its dealings.
- b. The expiration or termination of this Agreement for any reason whatsoever shall not affect any obligation of either Party having accrued under the Agreement prior to the expiration or termination of this Agreement and such expiration or termination shall be without prejudice to any liabilities of either Party to the other Party existing at the date of expiration or termination of this Agreement.

## 7. EXPENSES

7.1 Subcontractor agrees to bear all reasonable out-of-pocket expenses and costs (including reasonable attorney and other professional fees and expenses) incurred in connection with the transactions contemplated by Agreement.

## 8. ASSIGNMENT

8.1 This Agreement may not be assigned by Subcontractor without the prior written consent of the Contractor. Subject to the foregoing, all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of the parties. Any attempted assignment of this Agreement by the Subcontractor in violation of this section shall be null and void.

## 9. MISCELLANEOUS

9.1 **Waiver.** Any term or provision of this Agreement may be waived at any time by the party entitled to the benefit thereof by a written instrument executed by such party.

9.2 **Notices.** Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally (to the attention of the person identified) to the address of such

person maintained on the book and records of the party sending the notice, or sent by telecopy, telegram or by certified mail, postage prepaid, or to such other address as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered or telegraphed or, if mailed, three business days after the date so mailed.

- 9.3 **Governing Law.** This Agreement shall be governed by, and interpreted and enforced in accordance with, the substantive laws of the State of \_\_\_\_\_.
- 9.4 **No Benefit to Others.** The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto and their executors, legal representatives, successors and assigns, and they shall not be construed as conferring and are not intended to confer any rights on any other persons.
- 9.5 **Contents of Agreement.** This Agreement together with any documents referred to herein set forth the entire agreement of the parties hereto and supersede any prior agreement or understanding of the parties with respect to the transactions contemplated hereby. This Agreement may not be amended except by an instrument in writing signed by each of the parties hereto, and no claimed amendment, modification, termination or waiver shall be binding unless in writing and signed by the party against whom or which such claimed amendment, modification, termination or waiver is sought to be enforced.
- 9.6 **Severability.** Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- 9.7 **Counterparts.** This Agreement may be executed in any number of counterparts, which when taken together, shall constitute but one and the same instrument. Any and all counterparts may be executed by facsimile.

## 10. DISPUTE RESOLUTION AND ARBITRATION

- 10.1 The Parties agree to negotiate in good faith to resolve any dispute between them arising out of, under or in connection with this Agreement. In the event the negotiations do not resolve the dispute to the reasonable satisfaction of the Parties, then each Party shall nominate a person of respectable professional standing and unimpeachable conduct as its representative. These representatives shall, within thirty (30) days of a written request by any Party to call such a meeting, meet in person and shall attempt in good faith to resolve the dispute.
- 10.2 Upon the Parties being unable to appoint the representatives as aforesaid, or if the disputes cannot be resolved by such representatives in such meeting as aforesaid, then in such an event, the disputes or differences shall be submitted to final and binding arbitration at the

request of either Party upon written notice to that effect to the other Party. In the event of such arbitration:

- a. Such arbitration shall be in accordance with the rules of American Arbitration Association (or any amendment thereof) (which are deemed to be incorporated in this Agreement by reference). All proceedings of such arbitration shall be in the English language. The venue of arbitration shall be \_\_\_\_\_.
- b. The arbitration panel shall consist of three arbitrators, one arbitrator to be appointed by each of the Parties and the third arbitrator to be appointed by two arbitrators so appointed.
- c. Arbitration awards rendered shall be final and binding and. The losing Party, as determined by arbitrators, shall pay all reasonable out-of-pocket expenses (including, without limitation, reasonable attorneys' fees) incurred by the prevailing Party, as determined by the arbitrators, in connection with any dispute unless the arbitrators direct otherwise.
- d. Nothing shall preclude a Party from seeking interim or permanent equitable or injunctive relief, or both, from any court having jurisdiction to grant the same. The pursuit of equitable or injunctive relief shall not be a waiver of the duty of the Parties to pursue any remedy for actual monetary damages through the arbitration described in this Section.

**IN WITNESS WHEREOF**, each Party hereto has signed, or caused to be signed by its officer thereunto duly authorized, this Agreement as of the date first above written.

**Contractor**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Subcontractor**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 1  
COVERED EQUIPMENT**

**SCHEDULE 2  
SCOPE OF WORK**