

BORAL

GENERAL TERMS AND CONDITIONS OF INDEPENDENT CONTRACTOR AGREEMENT (Regular Form)

SCHEDULE 1

Boral Entity: _____

- a. **Name of Contractor:** _____
- b. **Address of Contractor:** _____
- c. **Job Site (Location):** _____
- d. **Effective Date:** _____, _____ **Term:** _____ (if applicable)
- e. **Services (Describe or attach description if necessary):**

- f. **Project Specific Information (to be determined for each project):**
- (1) **Completion Date** (estimated if not known) _____
- (2) **Contract Price:** \$ _____ (fixed price) or
Other Price \$ _____ (describe) _____

- (3) **Payment Terms:** _____
- (4) **Special Provisions** (if any): _____

Insurance Coverage: Every Contractor shall maintain the following liability insurance: Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1 million each occurrence, \$2 million general aggregate and \$2 million products/completed operations aggregate; Auto Liability Insurance with a limit of not less than \$1 million each accident, and if necessary, commercial umbrella liability insurance with a limit of not less than \$1 million; and statutory Workers' Compensation and Employer's Liability Insurance with at least \$500,000 coverage for each accident for bodily injury by accident or \$500,000 for each employee for bodily injury by disease or for death. If the amount of the umbrella liability coverage is at least \$1 million, then the \$1 million limit will be satisfied for any underlying risks (CGL, AL, etc) covered by the umbrella policy. The \$1 million limit requirements noted above may be reduced by an authorized Boral employee after careful consideration of the nature of the contractor's work and any potential exposure to Boral. Any additional coverage required will be set out below. **SEE SECTION 13 OF THE TERMS AND CONDITIONS OF THIS AGREEMENT REGARDING INSURANCE PROVISIONS.**

COVERAGES	Excess Coverage Required (Complete Only if Greater than \$1 Million Coverage Required)	Actual Limits of Contractor's Insurance	Initialed by Authorized Boral Employee If Less Than \$1 Million Limit
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Commercial General Liability	\$ _____	\$ _____	_____
Workers' Compensation and Employer's Liability	\$ _____	\$ _____	_____
Auto Liability	\$ _____	\$ _____	_____
Other (Describe)	\$ _____	\$ _____	_____

Current Insurance Certificate Must be Provided: _____ Yes (Check if provided or on file. Boral may not sign Agreement until provided or if on file.)

Boral and Contractor hereby agree and consent to be bound by this Schedule 1, and the BORAL General Terms and Conditions of Independent Contractor Agreement, each of which are incorporated herein by reference.

CONTRACTOR

By: _____
 Print Name: _____
 Title: _____

BORAL

By: _____
 Print Name: _____
 Title: _____

BORAL

GENERAL TERMS AND CONDITIONS OF INDEPENDENT CONTRACTOR AGREEMENT (Regular Form)

THIS INDEPENDENT CONTRACTOR AGREEMENT (this "Agreement") is made as of the Effective Date set forth in Schedule 1 by and between the **BORAL** entity and the **CONTRACTOR** in Schedule 1.

BACKGROUND

Boral wishes to engage Contractor and Contractor wishes to be engaged by Boral to provide the independent contracting services described in Schedule 1, on the terms and conditions provided in this Agreement.

In consideration of the aforesaid, and the mutual agreements contained herein, the parties agree as follows:

1. **Independent Contractor Status.** The parties intend that Contractor be an independent contractor and not an agent or employee of Boral. Boral is interested only in the results obtained under this contract. The manner and means of providing the services described above and requested by Boral shall be under the control of Contractor. None of the benefits provided by Boral to employees, including, but not limited to, workers' compensation insurance and unemployment insurance, are available from Boral to Contractor or any employee or agent of Contractor.

2. **Best Efforts.** During the period of this Agreement, Contractor agrees to use its best efforts, energy and skills in providing the services described in Schedule 1 hereto, which Schedule 1 may be modified by Boral from time to time. The services shall be completed by the Completion Date set forth in Schedule 1, time being of the essence of this Agreement.

3. **Payment.** In consideration of performance of contractor's services pursuant to this Agreement, Boral agrees to pay Contractor in accordance with the terms set forth in Schedule 1 above, which terms may be modified from time to time only upon the mutual written agreement of Boral and Contractor. If not otherwise stated in Schedule 1, Contractor's invoices shall itemize labor and materials. Payment of the Contract Price set forth in Schedule 1 shall be made against valid invoices for services completed in a workmanlike manner, free from defects, satisfactory to Boral and free and clear of all liens and claims of every kind. Payment shall be made provided Contractor is not in default under any terms of this Agreement and upon completion of all services to the satisfaction of Boral.

4. **Control.** Contractor shall have control of the manner and means of performing this Agreement, and shall complete its services according to its own means and methods of work. Contractor shall direct the performance of all Contractor's employees, agents, workers and subcontractors.

5. **Subcontractors.** Contractor shall not assign, delegate or subcontract any portion of the services without Boral's prior consent as to the identity of each subcontractor and the extent of services each is to perform.

6. **Supervision; Qualification.** Contractor will be responsible for and will superintend the execution of all work covered by this Agreement. Contractor agrees that its employees, subcontractors, agents and representatives shall be competent and qualified, shall give personal attention to the work hereunder at all times, and shall represent Contractor with full power to act in all matters pertaining to this Agreement.

7. **Labor and Materials.** Contractor shall furnish, at Contractor's own expense, all labor, materials, equipment, and other items necessary to carry out the terms of this Agreement. Contractor shall be responsible for any loss of or damage to materials, equipment, or other articles used or held for use in connection with the work.

8. **Contractor's Warranty.** Contractor warrants to Boral that: (i) title to all work, materials and equipment shall be in Boral free and clear of all liens; (ii) all materials and equipment will be new unless otherwise specified, of good quality and free from defects in design, workmanship and materials; and (iii) work will be fit for the purposes intended and will meet specifications and performance guarantees. Contractor shall secure for the benefit of Boral the best available warranties of third party vendors, subcontractors and suppliers for portions of work furnished by them.

9. **Compliance with Laws.** Contractor shall adhere to all federal and state laws, rules and regulations and ethical standards, and shall maintain all licenses and permits, applicable with respect to the services to be provided by Contractor, and shall perform such services in a manner consistent with generally accepted procedures for the industry in which Contractor conducts business.

10. **Safety Rules and Regulations.** Contractor acknowledges receipt of a copy of, and agrees to comply with, all safety rules, regulations, and policies of Boral and any other person whose safety rules, regulations and policies apply to Contractor's work. Contractor shall provide its employees and approved subcontractors with proper training (including hazard and communications training) and personal protective equipment necessary for them to perform the services in a safe and efficient manner. Contractor shall familiarize its employees, agents and approved subcontractors with the applicable OSHA regulations and the safety rules, regulations and policies of Boral and any other person whose safety rules, regulations and policies apply to Contractor's work. In case of any conflict between the safety rules, regulations or policies of Boral and any other person, the most stringent safety rule, regulation or policy shall apply to Contractor's work.

11. **Withholdings; Taxes.** Contractor acknowledges that Boral shall not withhold from the amounts payable to Contractor hereunder, any amounts for federal or state income taxes, social security payments or other withholdings. Contractor agrees to report all income derived from Boral pursuant to this Agreement to the appropriate federal, state and local agencies and to pay all taxes owing with respect to same.

12. **Indemnity.** Contractor shall indemnify Boral and hold it harmless from and against any and all claims, actions, damages, liabilities, payments, taxes, interest, penalties, fees, and expenses in connection with loss of life, personal injury, damage to property, other damages and/or claims occasioned wholly or in part by the act or omission of Contractor, its agents, subcontractors, or employees, and arising from or out of or in connection with any breach of this Agreement by Contractor and/or Contractor's performance of its duties pursuant to this Agreement.

13. **Insurance.** Contractor shall procure and maintain throughout the period of this Agreement a policy or policies of insurance, at its sole cost and expense, providing primary insurance coverage to Contractor, of the types set forth below and in Schedule 1 against all claims, demands, or actions arising out of or in connection with Contractor's, and its agents, subcontractors and employees, performance of its duties pursuant to this Agreement. The limit(s) of such policy or policies will be as set forth below and in Schedule 1, provided, however, that the limit(s) of said insurance shall not limit the liability of Contractor to Boral hereunder.

Commercial General Liability Insurance. Contractor shall maintain commercial general liability (CGL) (ISO Form CG00001 or its equivalent) with a combined single limit of \$1,000,000 for bodily injury and property damage per occurrence and a limit of not less than \$2,000,000 general aggregate /\$2,000,000 products/completed operations aggregate. The general aggregate shall apply separately to this project and the Contractor shall obtain the necessary endorsements for this purpose. Contractor agrees that Boral shall be, and shall instruct its insurer to name Boral as, an additional insured under such policy or policies (ISO CG2010 and ISO CG2037 endorsements, or their equivalent), and will provide Boral with written evidence of such endorsements. Contractor agrees, and will provide written evidence to Boral, that its insurer acknowledges and agrees that such coverage of the Contractor is primary by issuing an ISO CG2001 endorsement or its equivalent, and that any insurance policy maintained by Boral for any such losses or damages shall be deemed excess coverage that is secondary to the coverage provided by such insurer to the Contractor. Such policy shall include a waiver of subrogation endorsement by the Contractor's insurer in favor of Boral by issuing an ISO endorsement CG2404, or its equivalent.

Business Automobile Liability Insurance. Contractor shall maintain business automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). This policy shall include an additional insured endorsement in favor of Boral and a waiver of subrogation endorsement in favor of Boral.

Workers Compensation and Employer's Liability Insurance. Contractor shall maintain workers compensation insurance with statutory limits. In addition Contractor shall maintain employers liability coverage with limits not less than \$500,000 each accident /\$500,000 each employee-disease and \$500,000 disease – policy limit. Such policy shall include a waiver of subrogation endorsement in favor of Boral.

Umbrella Liability. Contractor shall maintain a commercial liability umbrella with limits of \$1,000,000 combined single limits for bodily injury and property damage, per occurrence or accident and \$1,000,000 aggregate (where applicable). As a minimum requirement, this policy's limits and coverage (including the referenced endorsements from the primary policies) will apply excess of the before mentioned Commercial General Liability, Business Automobile and Employers Liability Policies maintained by Contractor as required in this Agreement. If the Contractor's commercial liability umbrella policy is at least \$1 million, such limit will meet the requirements set forth above with respect to any underlying risks also covered by the commercial liability umbrella policy.

The \$1 million limits may only be reduced by the initials of an authorized Boral employee on Schedule 1 to this Agreement. All insurance policies provided by Contractor pursuant to this Agreement shall have an AM Best's rating of A-VIII or higher and the insurer for each policy shall be admitted in the state in which the work is to be performed. Contractor also shall provide Boral with written evidence that its insurer agrees to provide not less than thirty (30) days prior written notice to Boral of any cancellation of the Contractor's policy, any reduction of limits or any other material changes in its coverage of the Contractor.

Other Insurance Coverage. Contractor shall maintain additional coverage as set forth in Schedule 1.

14. **Lien Waivers.** It shall be a condition precedent to the payment of any Contractor invoice that Contractor submit with each invoice for payment waivers and assignments of liens all in a form reasonably acceptable to Boral. Contractor shall be required to provide Boral with a list of every subcontractor, materialman, engineer or architect who might have lien rights on the project. In addition, within fifteen (15) days after substantial completion of the project or Contractor's services has been reached, Contractor shall (i) obtain written lien waivers in favor of Boral from each and every contractor, subcontractor, materialman, engineer and architect who might have lien rights for such work, and (ii) provide copies of such lien waivers to Boral.

15. **Term; Cancellation.** Boral may immediately cancel this Agreement if Contractor breaches this Agreement and either party may cancel this Agreement on thirty (30) days written notice; otherwise, this Agreement shall remain in force until the Completion Date set forth in Schedule 1 above. The term of this Agreement may only be extended in writing by Boral. The termination of this Agreement shall not affect the survivability of those provisions of this Agreement which survive in accordance with their terms.

16. **Amendments.** This Agreement may not be amended or modified in any way without the express written consent of both parties hereto.

17. **Other Agreements.** If Contractor has entered into any other agreement or agreements with a Boral company with respect to substantially the same work as covered by this Agreement, and the provisions of such other agreement(s) conflict with the provisions of this Agreement, then the conflicting provisions of such other agreement(s) (including without limitation any provision regarding the term or rights to cancel such agreement(s)) shall control the performance of such work by Contractor. All other provisions of this Agreement or such other agreement(s), whether different or supplemental, shall continue in full force and effect in accordance with their respective terms.