

Disclaimer:

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SAMPLE TEMPLATE - DO NOT USE WITHOUT LEGAL REVIEW

CONTRACTOR INDEMNIFICATION AGREEMENT FOR ASSESSMENT WORK

THIS AGREEMENT (the “**Agreement**”) is made this ____ day of ____ (the “**Effective Date**”), by and between ____, a New York corporation, having an address at ____ (“**Owner**”), and ____, a New York corporation, having an address at ____ (“**Contractor**”).

WHEREAS, Owner represents it is the owner of the premises located at ____ (the “**Property**”); and

WHEREAS, Owner has agreed to allow Contractor to enter onto the Property for the purpose of the Contractor performing certain assessments of the Property including but not limited to the installation of certain probes around the Property to assess whether Contractor can perform certain work at the Property and to establish a scope of work for the same (“**Assessment Work**”); and

WHEREAS, in consideration of owner permitting Contractor, Contractor’s subcontractors, and/or Contractor’s consultants (all the foregoing, collectively, the “**Contractor Parties**”) to enter onto the Property for the purposes of performing the Assessment Work, Contractor intends and agrees to indemnify, defend, and hold Owner harmless against any bodily injury or property damage or other damage occurring as a result of acts or omissions of Contractor, Contractor Parties, or anyone acting on behalf of Contractor;

NOW, THEREFORE, for the term of this Agreement, Contractor and Owner agree as follows.

1. Term.

1.1 This Agreement shall become effective as of the Effective Date and shall remain in effect until the date that is two (2) years following Contractor’s completion of the Assessment Work at the Property, unless earlier terminated by either party upon not less than five (5) days’ prior written notice given prior to commencement of the Assessment Work. If this Agreement is terminated prior to commencement of the Assessment Work, neither party shall have any further obligations hereunder, and any amounts previously paid by Owner in connection with the Assessment Work shall be promptly refunded to Owner. This Agreement may also be superseded by and incorporated into a definitive written agreement between the parties.

2. Indemnification.

2.1 To the fullest extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless Owner, and the shareholders, officers, directors, employees, agents, parents, subsidiaries, and affiliates of Owner (each being an “**Indemnified Party**” and,

collectively, the “**Indemnified Parties**”), from and against any and all claims, losses, liabilities, judgments, damages, costs, expenses, demands, and suits, (including but not limited to fees and expenses of attorneys, experts, consultants, and administrative costs, court costs and fees, and all other costs of litigation), whether related to death, personal injury, property damage (including loss of use thereof), or otherwise, arising out of or related to, or alleged to arise out of or be related to the performance of the Assessment Work, Contractor's or Contractor Parties' entry onto the Property, Contractor's and/or Contractor Parties' work at the Property pursuant to a separate agreement, or the work of its subcontractor(s) or anyone directly or indirectly employed by Contractor or for whom Contractor may be liable, or caused by the negligent acts or omissions of Contractor, Contractor Parties, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in whole or in part by the negligence or culpable conduct of any Indemnified Party.

2.2 In any and all claims against an Indemnified Party by an employee of Contractor, its agents, subcontractors, or anyone directly or indirectly employed by them or for whose acts they may be liable, Contractor's indemnification obligations under this Agreement shall not be diminished or limited in any way by any limitation on the amount or type of costs, damages (including any consequential damages waiver or other limitations of liability), compensation, or benefits payable by or for Contractor under a separate agreement between Owner and Contractor or under any workers' compensation, disability benefit, or other employee benefit act.

2.3 Contractor shall: (a) at its own cost, expense, and risk, defend any and all claims, demands, and suits that may be brought or instituted against any Indemnified Party by any third party, including but not limited to any governmental, state, or local agency, or any employee of the Contractor and any party for whose acts they may be responsible; and (b) reimburse the Indemnified Parties for any and all legal, expert, consultant, and administrative fees and costs, all other fees and costs of litigation, arbitration, mediation, or other proceeding, and related expenses incurred by any of them in connection herewith or in enforcing the indemnity granted herein. Indemnified Parties retain the right to approve counsel to be employed in their defense, which approval shall not be unreasonably withheld, conditioned, or delayed.

2.4 Contractor's indemnification obligation shall: (a) survive termination of this Agreement; (b) extend to claims occurring after the signing or termination of any separate agreement between Owner and Contractor or completion of the Project; and (c) not be limited in any manner by Contractor's insurance coverage required under this Agreement.

3. Contractor Insurance.

3.1 While this Agreement is effective, Contractor(s) shall provide and maintain in full force and effect insurance policies providing coverages as specified below, with limits of liability not less than those shown herein:

(a) Commercial General Liability (“**CGL**”) with a limit of not less than \$4,000,000 General Aggregate Limit; \$4,000,000 Products-Completed Operations

Aggregate; \$2,000,000 Personal & Advertising Injury Limit and \$2,000,000 Each Occurrence Limit. The CGL insurance policy shall be endorsed to provide a separate general aggregate for this project.

(b) Business automobile liability insurance including non-owned and hired car coverage as well as owned vehicles with a single limit of \$1,000,000.

(c) Statutory Workers' Compensation, Disability Benefits and employer's liability insurance covering all contractor employees associated with this agreement, with employer's liability as required by applicable law, but with limits of not less than \$500,000.

(d) Property insurance on the contractor's property, including but not limited to tools and equipment not intended to be incorporated in the Work.

(e) Professional Liability/Errors or Omissions Coverage is required for contractors providing professional services. This would include, but not limited to, architects, engineers and other any contractor providing design work. Limit required is \$1,000,000.

(f) Contractor will provide an umbrella liability insurance policy which covers the same liabilities as the liability insurance policies required in subsections a, b, c, d & e above \$10,000,000 in excess of the contractor's liability insurance policies required in subsections a, b, c, d & e above.

3.2 Contractor shall name as additional insureds and obtain from its insurance carrier specific endorsements of its primary and excess umbrella policies to:

(a) cause Owner and those other certain entities or individuals provided to Contractor in writing (each being an "**Additional Insured**" and, collectively, the "**Additional Insureds**") to be named as an additional insured under Contractor's insurance policies required pursuant to this Agreement; and

(b) cause the coverage afforded the Additional Insureds thereunder to be provided on a primary and non-contributory basis and concurrent with other valid and collectible insurance available to Owner.

3.3 Within five (5) days of Owner's demand therefor, Contractor shall provide Owner with certificates of insurance demonstrating the policies and coverages to be provided pursuant to this Agreement are in full force and effect and that the Additional Insureds are duly covered pursuant to such policies.

3.4 Contractor's failure to abide by any of the requirements or obligations of this Section 3 shall be deemed a material breach of this Agreement.

3.5 Owner shall keep in force or renew, as appropriate, during the Assessment Work the current property insurance now in place and covering the entire Property to the

replacement value thereof and, upon reasonable prior written request, provide documentation to Contractor of same. This insurance will include the interests of Owner.

3.6 In the event of loss, damage, casualty, or other similar event at the Property, Owner and Contractor acknowledge and agree that Owner shall first look to Contractor's respective insurance coverage for payment of damages resulting from an occurrence at the Property and, in the event such coverage fully satisfies the damage Owner incurs, then Owner shall have no further claim, cause of action, or right to file legal proceedings against Contractor as it concerns that occurrence. However, in the event the insurance coverage concerning the damage from an occurrence is insufficient to make whole the damaged party, said damaged party retains any and all rights, claims, and causes of action against the party that may be liable for the damage.

4. Miscellaneous.

4.1 This Agreement shall be governed and interpreted in accordance with New York State law. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts located within the State of New York for any action, suit, or proceeding arising out of or relating to this Agreement, and waives any objection to venue in such courts, including any defense based on lack of personal jurisdiction, improper venue, or *forum non conveniens*.

4.2 This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same instrument.

4.3 Upon a breach of this Agreement by the Contractor, Owner shall have available to it all remedies at law or in equity.

IN WITNESS WHEREOF, Owner and Contractor have duly executed this Agreement on the date first above written.

Owner:

By: _____
Name: _____
Title: _____

Contractor:

By: _____
Name: _____
Title: _____