

ConstructSecure Contractor Assessment Safety Program Subcontractor Participation Agreement

THIS SUBCONTRACTOR PARTICIPATION AGREEMENT (THE “AGREEMENT”) IS A BINDING AGREEMENT BETWEEN CONSTRUCTSECURE, INC. , A DELAWARE CORPORATION WITH A PRINCIPAL PLACE OF BUSINESS AT 450 BEDFORD STREET, SUITE 2200 LEXINGTON MA 02420, MASSACHUSETTS (“CONSTRUCTSECURE”), AND THE SUBCONTRACTOR UPON WHOSE BEHALF INFORMATION IS SUBMITTED ON THIS WEBSITE. The person submitting such information represents and warrants that he or she is 18 years of age or older and duly authorized by such subcontractor to enter into this Agreement on behalf of such subcontractor. Such person and such subcontractor are hereinafter referred to as “you.”

DO NOT USE THE SERVICE OFFERED THROUGH THIS WEBSITE UNTIL YOU HAVE CAREFULLY READ THIS AGREEMENT. BY USING THE SERVICE, YOU ARE AGREEING TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THE CONFIDENTIALITY PROVISIONS AND LIMITATIONS ON LIABILITY SET FORTH HEREIN.

I ACCEPT THIS AGREEMENT

I DO NOT ACCEPT THIS AGREEMENT

This Agreement sets forth the terms and conditions of your participation as a subcontractor in the ConstructSecure Contractor Assessment Safety Program (the “Program”), pursuant to which subcontractors submit certain prescribed safety and financial information to ConstructSecure, ConstructSecure uses that information and its proprietary algorithms to create safety and/or financial assessments of the Subcontractor, and ConstructSecure submits such safety and/or financial assessments to the entities designated by the subcontractor, which use it in their subcontractor evaluation processes.

1. What You Do. In order to participate in the Program, you agree to submit certain prescribed information to ConstructSecure in the required format and designate the Owners, GCs and insurance companies that are authorized to receive your information and ConstructSecure’s Assessments of you (“Authorized Recipients”) You can add or delete Authorized Recipients and update your information at any time although it may take ConstructSecure five business days to make any changes that you input. You agree that the information you submit to ConstructSecure on this website and otherwise is accurate and complete.
2. What ConstructSecure Does with the Information. You understand and agree that (a) the information you submit along with public information (for example, OSHA record keeping documents, experience modification rating) will be used by ConstructSecure to create numerical assessments of your safety and financial status (“Assessments”); and (b)

the Authorized Recipients will receive such Assessments from ConstructSecure and will have access to the information submitted by you and the other information. You further understand and agree that ConstructSecure may de-identify and aggregate any information submitted by you and other subcontractors (“Aggregated Information”) and that ConstructSecure owns all Aggregated Information and may use it for any purpose and communicate it to any third party without any obligation to you.

3. What Authorized Recipients Do with the Assessments. The Authorized Recipients can use such Assessments and related information in their evaluations of whether to employ and/or permit you to be employed as a subcontractor on their projects. Authorized Recipients have agreed with ConstructSecure only to use the Assessments and subcontractor-specific data for their internal purposes and not to share the Assessments or the information you submit with parties outside their review teams. Review teams might include Construction Managers, General Contractors and Insurance Representatives. You understand, however, that ConstructSecure is not responsible for violations by the Authorized Recipients of such agreements. Furthermore, you understand and agree that both ConstructSecure and the Authorized Recipients may disclose your safety information when required by law or in order to prevent or mitigate dangerous or potentially dangerous situations.

4. What You Get. ConstructSecure will provide you with reports indicating the results of your safety Assessment and, in ConstructSecure’s discretion, related information. In addition, should you elect to obtain this service, ConstructSecure will provide you with the ability to upload certain training certificates and insurance certificates and reminders about when such certificates are about to expire, and related information. (See program details at <https://www.constructsecure.com/Content/Downloads/SubcontractorDocument.pdf>) Because ConstructSecure’s financial Assessments use diverse criteria provided by individual Clients, you will not be provided with any financial Assessment results.

5. What You Can and Can’t Do With Reports and Website Content. You may download, view, copy, and print reports and certificates provided to you by ConstructSecure subject to the following: (a) the reports may be used solely for participation in the Program and informational, non-commercial purposes; and (b) the reports (including the Assessments) may not be modified or altered in any way or shared with any third party other than an Authorized Recipient as part of your participation in the Program. You may not use, download, upload, copy, print, display, perform, reproduce, publish, license, post, transmit, or distribute any information from this website in whole or in part without the express written authorization of ConstructSecure. Documents specified above do not include the design or layout of this website or any other ConstructSecure owned, operated, licensed, or controlled website. Elements of ConstructSecure websites are protected by trade dress, trademark, unfair competition, and other laws and may not be copied or imitated in whole or in part. No logo, graphic, sound, or image from any ConstructSecure website may be copied or retransmitted unless expressly permitted in writing by ConstructSecure.

6. What You Pay for Participation in the Program. For participation in the Program, **one time per year** you pay ConstructSecure the applicable amount set forth on ConstructSecure's then-current Pricing Schedule. Click [here](#) for the current Pricing Schedule and payment instructions. No refunds are available.

7. How ConstructSecure Stores and Protects Your Information. In order to verify the accuracy of its Assessments, ConstructSecure retains copies of all information submitted by you. Although you understand and agree that no service that utilizes the Internet can be completely secure, in order to protect your data and the Assessments, ConstructSecure takes the following precautions:

- Any data transfer or download happens via the SSL protocol.
- To access or download any data, the user must login with username/password. Our tests indicate that without such login, data cannot be changed.
- During uploading of data, files are encrypted and stored in the database in encrypted form.
- Any stored backups are encrypted.
- Any stored logs are encrypted.
- Each encrypted data file has its own unique key.
- During processing of data, ConstructSecure does not use any temporary storage where the data would be stored in an unencrypted form. The data is processed in an isolated place.

8. Disclaimer of Warranties. ConstructSecure and/or its licensors make no representations about the Program, the accuracy or suitability of the Assessments provided to Subcontractor or Authorized Recipients or any information, content, documents, and/or related graphics published on this website ("Website Content"). The Assessments are created by ConstructSecure using information provided by you, publicly available information, and algorithms and formulae the efficacy of which are matters of judgment. ConstructSecure has no means of checking the accuracy of such information and does not do so and cannot and does not guarantee the efficacy of the algorithms and formulae used to create the Assessments and, as a consequence, cannot be responsible for the accuracy of the Assessments. As a consequence, **your participation in the Program is solely at your own risk and all Assessments, reports and Website Content are provided "AS IS" AND WITHOUT WARRANTY OF ANY KIND.** ConstructSecure and/or its licensors and contracting partners hereby disclaim all warranties and conditions with regard to the Program, the Assessments and reports, and the Website Content, including all implied warranties and conditions of merchantability, fitness for a particular purpose, title, and non-infringement.

9. Exclusion of Certain Damages. **TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL CONSTRUCTSECURE AND/OR ITS LICENSORS OR CONTRACTING PARTNERS BE LIABLE TO YOU FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR DAMAGES RESULTING FROM LOSS OF USE, DATA,**

REPUTATION, BUSINESS OR PROFITS, WHETHER IN AN ACTION OF EQUITY, CONTRACT, NEGLIGENCE, OR OTHER TORTIOUS ACTION, ARISING OUT OF OR IN CONNECTION WITH PARTICIPATION IN THE PROGRAM, THE ASSESSMENTS AND REPORTS, THE USE OR PERFORMANCE OF THIS WEBSITE AND THE WEBSITE CONTENT, OR PROVISION OF OR FAILURE TO PROVIDE SERVICES AVAILABLE FROM OR THROUGH THIS WEBSITE. WITHOUT LIMITING THE FOREGOING, YOU UNDERSTAND AND AGREE THAT THE ASSESSMENTS, REPORTS AND WEBSITE CONTENT COULD INCLUDE TECHNICAL INACCURACIES, ERRORS, OR OMISSIONS. ALTHOUGH CHANGES ARE PERIODICALLY MADE, CONSTRUCTSECURE AND/OR ITS RESPECTIVE LICENSORS AND CONTRACTING PARTNERS MAY, BUT ARE NOT OBLIGATED TO, MAKE IMPROVEMENTS AND/OR CHANGES IN THE INFORMATION, SERVICE(S), PRODUCT(S), AND/OR THE PROGRAM DESCRIBED HEREIN AT ANY TIME.

10. Cap on Aggregate Damages. **WITHOUT LIMITING THE FOREGOING DISCLAIMERS, EXCLUSIONS AND LIMITATIONS, UNDER NO CIRCUMSTANCES WILL CONSTRUCTSECURE AND/OR ITS LICENSORS OR CONTRACTING PARTNERS BE LIABLE TO YOU FOR AN AMOUNT IN EXCESS OF THE FEES YOU PAID TO CONSTRUCTSECURE IN CONNECTION WITH PARTICIPATION IN THE PROGRAM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO FIRST DATE ON WHICH YOU NOTIFIED CONSTRUCTSECURE OF THE FACTS ALLEGEDLY GIVING RISE TO CONSTRUCTSECURE'S LIABILITY.**

11. Indemnification. To the fullest extent permitted by law, you shall defend or settle at your sole expense any claim or suit, including without limitation any proceeding, investigation or claim by a private individual or entity, self-regulatory organization, state or federal department, agency or commission, (collectively, an "Action") against ConstructSecure and/or each of its affiliates, directors, officers, agents, employees, contracting partners, licensors or licensees (collectively, the "Indemnitees") arising out of or in connection with: (1) an assertion that the information, content, or other materials or services provided or made available by you, or the use thereof, may infringe any copyright, trademark, or other intellectual property rights of any individual or entity, or are a misappropriation of any individual or entity's trade secret, or contain any libelous, defamatory, disparaging, pornographic, or obscene materials; (2) an assertion that an Assessment or any information provided in connection with an Assessment is inaccurate or otherwise defective; (3) any breach by you of your obligations under this Agreement; and (4) your use of this website, including the information, content, services, and/or products provided therein. You shall indemnify and hold harmless the Indemnitees from and against any and all damages, costs, liabilities, and attorneys' fees incurred in defending and/or resolving such Action.

12. Compliance with Laws; Export Control. You agree to comply with all laws and regulations relating to your participation in the Program, including without limitation

those relating to export and import, privacy, and personal data protection. ConstructSecure's obligation to fulfill this Agreement is subject to the proviso that it is not prevented by any impediments arising out of national and international foreign trade or customs requirements, including embargoes or other sanctions. This Agreement is subject to all United States laws and regulations as may be enacted, amended or modified from time to time regarding the export from the United States of ConstructSecure software, services, technology, or any derivatives thereof.

13. Assignment. You shall not assign this Agreement without the prior written consent of ConstructSecure. ConstructSecure may freely assign this Agreement to its Affiliates (defined as entities under common ownership and control with the party) or to successors-in-interest or successors-in-title in the event of a change of control, merger, consolidation or acquisition of all or substantially all of its assets or business. This Agreement shall be binding upon and inure to the benefit of the successors and the permitted assigns of the respective parties hereto.

14. Governing Law; Jurisdiction; Severability; No Waiver. This Agreement shall be governed by, and construed in accordance with, the substantive laws of the Commonwealth of Massachusetts (U.S.A.) without regard to its conflict of laws principles. The parties expressly exclude the provisions of the United Nations Convention on Contracts for the International Sale of Goods. You hereby (i) submit to the exclusive jurisdiction of any state court sitting in Middlesex County, Massachusetts or federal court sitting in Boston, Massachusetts for the purpose of any action arising out of, or relating to, this Agreement; and (ii) irrevocably waive, and agree not to assert by way of motion, defense or otherwise, in any such action, any claim that you are not subject personally to the jurisdiction of such courts. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be enforced to the maximum extent possible and the remaining provisions of this Agreement shall continue in full force and effect to the maximum extent permissible without being impaired or invalidated in any way. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof.

15. Force Majeure. Neither party shall be liable under this Agreement by reason of any failure or delay in the performance of its obligations under this Agreement on account of riots, insurrections, fires, floods, storms, explosions, acts of nature, acts of terrorism, war, governmental action, earthquakes, or any other cause that is beyond the reasonable control of such party ("Force Majeure"). However, if such delay suspends performance of this Agreement for more than sixty (60) days, either party has the right to terminate this Agreement at its discretion.

16. Entire Agreement; Interpretation. This Agreement, including the accompanying/linked exhibits, constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements or understandings, written or oral, between the parties hereto with respect to the subject matter hereof. In this Agreement, the word "including" means "including,

without limitation,”

17. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer on any person or entity other than the parties any right, remedy or claim, legal or equitable, and this Agreement and all of its provisions are intended to be, and shall be, solely and exclusively for the benefit of the parties.

18. Term and Termination. Either party may terminate this Agreement for any reason or no reason upon notice to the other party in accordance with Section 19 hereof. This Agreement will terminate automatically upon termination of the Program by ConstructSecure, upon your breach of any of the terms hereof or upon your failure to make annual payments in accordance with Section 6 hereof. No refunds are available unless ConstructSecure terminates the Program or your participation in the Program without cause or you terminate for ConstructSecure’s breach in which case, as your sole compensation and ConstructSecure’s entire liability, ConstructSecure will refund to you the balance of your pre-paid unused annual fees pro-rated in accordance with the percentage of the annual period remaining in your current annual term. Sections 8 through 19 of this Agreement shall survive any termination or expiration of this Agreement for any reason.

19. Notices. Notices to you under this Agreement shall be sufficient if posted by ConstructSecure on its website at <https://www.constructsecure.com/terms> or emailed to you. Notices to ConstructSecure under this Agreement shall be sufficient only if in writing and transmitted via personal delivery or delivered by a major commercial rapid delivery courier service or by certified or registered mail, return receipt requested, to: ConstructSecure, Inc., 225 Cedar Hill Street, Suite 200, Marlborough, MA 01752.