



### **Facility Maintenance Subcontractor Agreement**

This Agreement ("Agreement"), dated this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, is entered into between Elite Building Services.

("Elite", "we" or "us") whose address is 1800 Naamans Road, Wilmington, DE and \_\_\_\_\_ "you" and/or "subcontractor"), whose address is \_\_\_\_\_.

☒ You are being contracted to perform facility maintenance services, which may include, but are not limited to general maintenance, handyman, electrical, plumbing and carpentry according to the agreed upon specifications to our customer(s) at such locations as we direct;

1) Duties: The specifications and pricing are outlined in the assigned work order. A work order must be signed by our customer following completion of Service. At our option work will be performed on the days and during the hours specified by our customer(s). Neither we nor our customers will supervise any of your employees or any aspects of the Services you provide. You must provide all supervision, labor, equipment, materials, and supplies. Improper work will be corrected free of charge.

2) Subcontractor's Obligations: In accordance with applicable law, you agree to obtain any necessary licenses or permits; comply with all federal, state, and local employment laws regarding payroll tax, withholding and reporting requirements for all individuals who provide services in connection with this Agreement and all safety and employment laws, rules and regulations; and complete an Employment Eligibility Verification Form from the Department of Homeland Security, also known as Form I-9, for each person who performs work for you. You agree to allow us access, on reasonable notice, to audit any and all of your records to insure compliance with the foregoing. Failure to comply will constitute a default hereunder.

3) Compensation: You must submit all Work Order(s) signed by our customer's representatives, along with an invoice reconciling the activity for each customer. You risk non-payment for services rendered if the signed Worker Order(s) is not submitted within 24 hours of completion of the Work Order(s). We will issue your payment 45 days after the date that we receive and process your invoice. Processing of invoices typically takes 10-14 days. Payment will be issued to you provided we have received your invoice within 30 days from the last day of the month that you provided the services. Invoices submitted after 30 days shall be deemed stale and subject to payment only at Elite's discretion. We are not obligated to pay you until we receive payment from our customer.

You assume the risk of non-payment by our customer for any reason including, without limitation, our customer's bankruptcy, insolvency, reorganization, financial distress, nonperformance, dissatisfaction with services, or any other reason in or out of our control.

4) Insurance: You must at all times maintain the insurance coverage as set forth in the attached sample Certificate of Insurance. You shall provide Elite with certificates of insurance and additional insured



endorsements evidencing the insurance required. All insurance shall be placed with insurance carriers acceptable to Elite that are licensed to do business in the State where the Services are being performed. If your insurance lapses during the service period you risk nonpayment. Subcontractor waives all rights against Elite, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability or Workers Compensation and Employers Liability insurance maintained per requirements stated above. Certificate Holder and Additional Insureds must be shown as indicated on the attached sample Certificate of Insurance. All insurance companies must be rated no lower than an A-VIII in the most current edition of A.M. Best's Property Casualty Key Rating Guide. All insurance policies shall be written on "an occurrence basis". No policies may be cancelled or materially revised without our prior written approval. You must immediately notify Elite of any injury or claim against you and/or us that arise and provide Elite with copies of all relevant documents. Should any insurance lapse herein Elite's obligation to pay for work performed shall be held in abeyance pending full retroactive reinstatement of coverage.

5) Independent Contractor: In the performance of the Agreement, you shall be an independent contractor. All persons who perform the Services under this Agreement must be your employees, and not your independent contractors. Nothing in this Agreement between Subcontractor and Elite shall be deemed to constitute a partnership, joint venture or other similar relationship, and you agree not to make any contrary assertion, claim or counterclaim in any action, suit or other legal proceeding involving you and Elite. You are responsible for all losses, damages, judgments, liabilities, claims, injuries, costs, and expenses arising directly or indirectly from the ownership and operation of your business, your motor vehicles, your property, and your performance of the Agreement. You are not authorized to contract on our behalf, to bind us in any manner, or to hold yourself out as anything but an independent contractor. You have full responsibility for all debts and obligations of your business. It is specifically understood that you will maintain all payroll records for your employees and that we will not do so. You agree to do business only under your own corporate name as our subcontractor and that you have not been licensed to use the Elite name.

6) Indemnification: To the fullest extent permitted by law, you and subcontractors, affiliates, agents or employees shall, at your own cost and expense, defend Elite and our customer and both Elite and our customer's respective officers, directors, employees, agents, shareholders, partners, joint ventures, affiliates, successors and assigns ("Indemnified Parties") from and against all allegations asserted in any and all claims reasonably related to Services you provided or failed to provide under this Agreement, regardless of whether the obligations are directed solely against one or more of the Indemnified Parties. To the fullest extent permitted by law, you shall indemnify and hold harmless the Indemnified Parties from and against any and all liabilities, obligations, claims, demands, causes of action, losses, expenses, damages, fines, assessments, awards, deficiencies, judgments, settlements, and penalties, including, without limitation, costs, and expenses whatsoever (including without limitation attorneys', consultants' and other professional fees and disbursements) incident thereto (collectively "Losses"), arising out of, based upon, occasioned by or in connection with your performance under the agreement. The indemnification obligation specified in this paragraph shall be construed so as to extend to all legal, defense, penalties, fees, assessments and investigation costs, as well as other costs, expenses, and liabilities incurred by the Indemnified Parties.



In no event shall we be liable for consequential, incidental or special damages, including without limitation and delay damages, lost opportunity damages or lost profits incurred by you or your affiliates, subcontractors, agents, or employees in connection with this Agreement.

7) Confidentiality and Non-Compete:

Confidential Information: You acknowledge that confidential and proprietary business information and trade secrets including, without limitation, our customer lists, the Services provided and the prices charged for them, our billing and payment procedures, our Work Orders, schedules, contracts, and other forms (hereinafter the "Confidential" Information") will become known by you. Disclosure of same will cause irreparable harm to us, you covenant neither to reveal to others nor to use it, except as authorized by us in writing, the Confidential Information. Said representation will survive termination of the Contract. Upon termination you must return all such Confidential Information to Elite.

Non-Competition and Non-Solicitation: During the term of this Agreement and for a period of twenty-four (24) months thereafter, you and your officers, shareholders, and directors agree not to contract, solicit, or do business with any of our customers (or their contractors, assigns or designees) for whom you performed Services under this Agreement, regardless of the location where you performed the Services. You agree not to solicit for employment nor hire any of our employees during the term of this Agreement and for six (6) months following its termination.

8) Termination or Cancellation: This Agreement or any schedule to this Agreement may be terminated by either party for any reason upon ten (10) days prior written notice by the terminating party delivered to the non-terminating party. In addition, this Agreement or any schedule to this Agreement may be terminated by us, upon one (1) days' notice, if we or our customer notifies you that your Services are unsatisfactory, you violate any provision of this Agreement, you fail to maintain the required insurance, you assign this Agreement, become insolvent, or declare bankruptcy, you subcontract the Services without written authorization from us, you fail to fully cooperate with us or our customer or our customer cancels their contract with us.

9) Dispute Resolution:

A. Governing Law: The laws of the State of Delaware shall govern the validity, performance, interpretation, and effect of this agreement. All parties hereto waive their right to trial by jury on any action, proceeding or counterclaim whether in law or in equity brought by either you or us.

B. Venue: Any claim, suit or proceeding commenced relative to this agreement shall be commenced only in the Delaware State Courts, which Courts shall have the sole and exclusive jurisdiction over any proceeding, suit or dispute hereunder; relative to the parties hereto or any entity which may owe a duty of indemnification to a party of this agreement.

10) Assignment: You may not assign this Agreement.

11) Right to Offset: We may withhold from payment owed to you any amount due to us from you under the indemnification provision, any other provision of this Agreement, or due to a breach of this Agreement in the performance of this agreement or as to any breach of the duty to indemnify.



12) Miscellaneous: If any sentence, paragraph or provision in this Agreement for any reason is deemed illegal or otherwise unenforceable, then the validity of the remaining sentences, paragraphs or provisions shall not be affected; and this Agreement shall be construed as if such provision had never been a part of it. This Agreement contains the entire agreement of the parties. No promises, inducements or representations not contained in this Agreement shall be of any force or effect or binding upon you or us. Any modifications, changes, or variances to this Agreement made by you shall be void and of no effect unless made in writing and signed by us.

The parties hereto have caused this Agreement to be executed by their authorized representatives and represent that they have full authority to enter into this Agreement.

Subcontractor

Elite Building Services

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\_\_\_\_\_

Printed Business Name

Signature of Authorized Rep

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Authorized Signature

Title of Authorized Rep

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Printed Name and Title of Authorized