



#### TERMS OF AGREEMENT

**SCOPE OF ENGAGEMENT**-SUBCONTRACTOR will deliver all work and final products on time and on budget unless otherwise agreed upon in writing and in advance by BOSS and SUBCONTRACTOR, with the highest degree of quality and service. SUBCONTRACTOR will work under the direction of the Customer Support Representative/Project Manager of BOSS and in compliance with the associated Work Order throughout the duration of the Agreement to ensure appropriate documents and activities are in compliance.

**BUDGET**-SUBCONTRACTOR shall receive from BOSS total compensation not to exceed the NTE (Not to Exceed) set forth in the project Work Order without express written authorization by BOSS to increase the NTE. Incurred in-direct costs exceeding the authorized NTE will become the responsibility of SUBCONTRACTOR. UNDER NO CIRCUMSTANCES SHALL SUBCONTRACTOR ACCEPT VERBAL AUTHORIZATION TO INCREASE NTE.

**PAYMENT TERMS**-All correspondences, quotes, invoices and the associated payments are assumed to be in US dollars.

No invoices will be processed without a completed invoice packet. Packets will not be considered complete without ALL of the following:

1. A completed BOSS Field Service Report with a site signature for each onsite visit and, if required, a store stamp. If required store stamp is not available, site manager must indicate so on the Field Service Report. Only a BOSS Field Service Report with ALL fields fully completed will be accepted.
2. All invoices must include sub-totals for LABOR, MATERIALS, DELIVER and SALES TAX (if applicable).
3. Invoices must include details regarding the number of technicians, number/type of equipment used and any materials used.
4. Within ten (10) business days following BOSS'S receipt of a properly completed invoice packet, BOSS shall notify SUBCONTRACTOR of any disputed amounts included on the invoice. BOSS agrees to pay SUBCONTRACTOR all undisputed amounts included on the invoice within forty five (45) calendar days of receipt of the complete invoice packet. All checks are to be made payable to SUBCONTRACTOR and mailed to the address indicated in this Agreement.

COMPLETE INVOICE PACKETS NOT RECEIVED WITHIN 7 DAYS FROM DATE OF WORK COMPLETION MAY BE SUBJECT TO A BACKCHARGE. FAILURE TO SUBMIT A COMPLETE INVOICE PACKET WITHIN 10 DAYS FROM DATE OF COMPLETION MAY BE SUBJECT TO REJECTION WITHOUT PAYMENT. MONTHLY RECURRING SERVICE INVOICES MUST BE SUBMITTED WITHIN 10 DAYS OF MONTH OF SERVICE.

#### REPRESENTATIONS AND WARRANTIES

**COMPLIANCE WITH APPLICABLE LAWS**-SUBCONTRACTOR represents that it has requisite experience, knowledge and expertise, suitable facilities and qualified personnel to properly carryout the work outlined above. SUBCONTRACTOR shall conform to and abide by all local Municipal, County, State and Federal laws and regulations, and ordinances licensing and accrediting authorities, insofar as the same or any of them are applicable. This includes standards of professional ethics governing the use of assessment tools, the provision of services via the Internet and telephone, and the dissemination of information materials. SUBCONTRACTOR shall immediately notify BOSS in writing if any of its licenses and permits are revoked, suspended, or if any lapse.

**LIABILITY AND INDEMNIFICATION**-To the fullest extent permitted by law, the Subcontractor agrees to indemnify, defend and hold harmless the Contractor as well as all parties listed below as additional insureds, their officers, directors, agents, employees and partners (hereafter collectively "Indemnitees") from any and all claims, suits, damages, liabilities, professional fees, including attorneys' fees, costs, court costs, expenses and disbursements related to death, personal injuries or property damage (including loss of use thereof) brought against any of the Indemnitees by any person or entity, arising out of or in connection with or as a result or consequence of the performance of the Work of the Subcontractor, as well as any additional work, extra work or add-on work, whether or not caused in whole or in part by the Subcontractor or any person or entity employed, either directly or indirectly by the Subcontractor including any subcontractors thereof and their employees. The parties expressly agree that this indemnification agreement contemplates 1) full indemnity in the event of liability imposed against the Indemnitees without negligence; and 2) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim which negligence is expressly accepted from the Subcontractor's obligation to indemnify. Attorneys' fees, court costs, expenses and disbursements shall be defined without limit to include those fees, costs, etc. incurred in defending the underlying claim and those fees, costs, etc. incurred in connection with the enforcement of this Subcontract Agreement. Indemnification under this Agreement shall operate whether or not Contractor has placed and maintained the insurance required under this Agreement. The Subcontractor shall cause all subcontract agreements it enters into to include this indemnification clause so as to ensure that Contractor and all Indemnitees hereunder shall have the same protection from sub-subcontractors as is afforded by the Subcontractor.

**AGENT OF DISCLOSED PRINCIPLE CUSTOMER**-It is hereby understood and acknowledged by SUBCONTRACTOR that BOSS is an agent for its disclosed Principal Customer; SUBCONTRACTOR shall perform all authorized services at BOSS'S Principal Customer's place of business. As such, BOSS'S Principal Customer remains primarily liable for the payment to SUBCONTRACTOR for the authorized services rendered. In the event that BOSS'S Principal Customer declares bankruptcy, BOSS, as Creditor, will submit a Proof of Claim in a particular bankruptcy proceeding, for the full-amount of agreed upon and authorized services, and use reasonable commercial efforts to attempt to obtain payment. In such event, SUBCONTRACTOR agrees not to look directly to BOSS for payment, but instead, will await payment, if any, in an amount determined by such court, pursuant to a formal plan of distribution approved by the subject bankruptcy court.

**OTHER TERMS**

**INSURANCE**-Without limiting SUBCONTRACTOR'S duty to indemnify BOSS during the term of this SUBCONTRACTOR Agreement, SUBCONTRACTOR shall provide and maintain at its own expense the following programs of insurance throughout the term of this SUBCONTRACTOR Agreement. All Contracts, Purchase Orders, Work Orders, Job Orders, etc., accepted by you shall be presumed accepted subject to all terms and conditions of this Blanket Agreement. SUBCONTRACTOR shall furnish prior to commencement of work, a Certificate of Insurance satisfactory to **Boss Facility Services Inc.** evidencing coverage requirements and limits stipulated below:

1) **Commercial General Liability (CGL)** coverage with limits of Insurance of not less than \$1,000,000 each Occurrence and \$2,000,000 Annual Aggregate.

- a) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
- b) CGL coverage shall be written on ISO Occurrence form CG 00 01 10/01 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, residential projects (if applicable) and personal and advertising injury.
- c) Contractor, Owner and all other parties who Contractor is required to name as additional insureds by any contract, shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG 20 10 (11 85) or a combination of CG 20 10 (10 01) & CG 20 37 (10 01), or an endorsement providing equivalent or broader coverage to the additional insureds. The coverage provided to the additional insureds under the policy issued to the Subcontractor shall be at least as broad as the coverage provided to the Subcontractor under the policy. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insureds.
- d) Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.
- e) CGL coverage shall not have exclusions for residential projects, territorial limitations, bodily injury to employees, work at heights or any other exclusion deemed unacceptable to the Contractor.

2) **Automobile Liability**

- a) Business Auto Liability with limits of at least \$1,000,000 each accident.
  - b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
  - c) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
- 3) **Commercial Umbrella**
- a) Umbrella limits must be equal to or greater than **\$5,000,000**.
  - b) Umbrella coverage must include as insureds all entities that are additional insureds on the CGL Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
  - c) Umbrella coverage for such additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Subcontractor.
  - d) Umbrella coverage shall not have exclusions for residential projects, territorial limitations, bodily injury to employees, work at heights or any other exclusion deemed unacceptable to the Contractor.

4) **Workers Compensation and Employers Liability**

- a) Employers Liability Insurance limits of at least \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for injury by disease.
- 5) **Waiver of Subrogation** – Subcontractor waives all rights against Contractor, 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 maintain per requirements stated above.

6) **Notice of Cancellation** – The required insurance policies shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Contractor.

7) The Subcontractor shall not sublet any part of its work without written approval from Boss, the Owner or Contractor. The Subcontractor shall not sublet any part of its work without assuming full responsibility for requiring similar insurance from its subcontractors and shall submit satisfactory evidence to that effect to the Contractor. Each such insurance policy of the sub-subcontractor, except the Workers Compensation Policy, shall include the Owner, the Contractor and all other parties who Contractor is required to name as additional insureds by any contract as an additional insured.

8) Prior to commencing the work, the Subcontractor shall submit to the Contractor a certificate of insurance, a copy of the Additional Insured Endorsement and a copy of the applicable Other Insurance clause that is part of the Subcontractor's Commercial General Liability Policy. The certificate of insurance must include the following wording in the Description of Operations Section: A copy of the entire Commercial General Liability policy with all endorsements shall be submitted to the Contractor when requested.

**NON-DISCLOSURE REQUIREMENTS**-SUBCONTRACTOR acknowledges that being contracted by BOSS involves coming into contact with confidential information ("Confidential Information"), described further below, belonging to BOSS and its customers or potential customers. SUBCONTRACTOR also acknowledges that BOSS has, among other legitimate interests, a significant interest in protecting from disclosure Confidential Information, including the methods by which BOSS does business, and the identity of BOSS'S customers. Confidential Information shall mean BOSS'S trade secrets, confidential or proprietary information and all other information, in whatever form, documents or materials (electronically stored or otherwise), the confidentiality of which BOSS takes reasonable measures to protect. Confidential Information includes, but is not limited to:

*Internal procedures, programs, confidential data forms, business records and plans, customer lists and records, identities of customers and prospective customers, information regarding the habits and needs of customers or prospective customers, pricing structure, discounts, costs, financial information, business methods, databases, computer programs, operating procedures, information provided to BOSS by BOSS'S customers, information related to consulting projects, the content of project reports, confidential communications between BOSS and its customers, other proprietary information that BOSS determines is Confidential Information.*



While performing services for BOSS, and at any time thereafter, SUBCONTRACTOR shall not use or disclose, directly or indirectly, any Confidential Information except as authorized by BOSS in a prior writing. SUBCONTRACTOR further agrees that it shall not use Confidential Information for any purpose other than as required for performing services for BOSS, and for the exclusive benefit of, BOSS.

SUBCONTRACTOR agrees that all documents and materials (electronically stored or otherwise) containing Confidential Information that SUBCONTRACTOR receives or prepares during its performance of services for BOSS are, and shall remain at all times, the property of BOSS. Under no circumstances shall information be copied or removed from BOSS'S premises except as instructed by the President of BOSS or his designee. The originals and all copies of documents or materials containing Confidential Information shall be maintained at BOSS'S offices and shall not be removed without the prior written consent of BOSS'S President or designee.

All documents and materials (electronically stored or otherwise) related in any manner to SUBCONTRACTORS services for BOSS and its Disclosed Principal Customer(s) shall be returned to BOSS by no later than the last day of SUBCONTRACTOR will perform any services on BOSS'S behalf, regardless of why such Agreement has come to an end.

**NON-COMPETE/COMPETITION**-While performing services for BOSS, and for a period of two (2) years following SUBCONTRACTORS termination of services for BOSS, SUBCONTRACTOR shall not directly, or indirectly, accept any job, work order, or perform any services, or have any other relationship (including, without limitation, to own, manage, operate, control, be employed by, or participate) with a Client or account of BOSS that SUBCONTRACTOR previously performed services for on BOSS'S behalf. During such timeframe, any and all such work requests that may come to SUBCONTRACTORS attention from a Client or account of BOSS shall be immediately directed to BOSS.

Because BOSS provides services to national and international businesses, and because its activities are conducted in person, by telephone, and over the internet, on a nationwide and international basis, the foregoing restrictions shall apply throughout the United States, for the two year period.

The restrictions stated in the above paragraphs shall be applicable regardless of the reasons SUBCONTRACTORS performance of services for BOSS comes to an end. SUBCONTRACTOR acknowledges that the restrictions stated in the above paragraphs, are reasonable and that, despite such restrictions, SUBCONTRACTOR will be able to earn a livelihood and engage in its profession. SUBCONTRACTOR further acknowledges that the geographic location designated above is also reasonable because BOSS does business worldwide with national and international companies, and the period of time (2 years) designated above is reasonable for the protection of BOSS'S legitimate interests, including the protection of its trade secrets and other Confidential Information.

SUBCONTRACTOR further agrees that during the term of its performance of services on behalf of BOSS, and for two (2) years following the last day of such services, regardless of the reasons such termination comes to an end, SUBCONTRACTOR will not, either on its own behalf or on behalf of any other person or entity, directly or indirectly (i) hire, solicit, or encourage any employee of BOSS to leave BOSS, or (ii) solicit, entice away or divert any person or entity who is a Client and/or account of BOSS.

For purposes of this section the term Client shall mean:

Any company and/or individual with whom BOSS has done business during the two-year period immediately preceding the last day of SUBCONTRACTORS performance of services;

The contact person(s) of any company with whom BOSS has done business during the five-year period immediately preceding the last day of SUBCONTRACTORS performance of services, regardless of whether such person has an equity interest in such company, and even if such person changes employment to a business entity that is not a client of BOSS during the five-year period immediately preceding the last day of SUBCONTRACTOR'S performance of services.

IN NO EVENT SHALL BOSS AND/OR ITS DISCLOSED PRINCIPAL CUSTOMER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, OR FOR TRANSPORTATION, INSTALLATION, ADJUSTMENT, OR OTHER EXPENSES, WHICH MAY ARISE IN CONNECTION WITH THE PERFORMANCE OF SERVICES OR NON-PERFORMANCE OF AN OBLIGATION, IN WHOLE OR IN PART, BY SUBCONTRACTOR.

**ENTIRE UNDERSTANDING**-This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreement or understanding between the Parties hereto.

This Agreement may not be changed or modified, released, discharged, abandoned, waived or terminated, in whole or in part, except by an instrument in writing signed by both of the Parties hereto.

This Agreement may not be assigned by SUBCONTRACTOR without the prior written consent of BOSS. Any attempted assignment of this Agreement or of any of the rights or obligations hereunder by SUBCONTRACTOR, without such prior written consent, shall be void and without any legal effect.

If any provision or clause of this Agreement, or portion thereof, shall be held by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall not thereby be affected and shall be given full effect, without regard to the illegal, void and/or unenforceable portion(s), as the case may be.

#### **ATTORNEY FEES-**

The prevailing party in any legal action brought due to a material breach by the other, or to interpret or enforce the terms of this Contract, shall be entitled to recover its costs of suit including, without limitation, reasonable attorney's fees.

**NOTICES**-All notices and other communications hereunder and hereafter, shall be deemed to have been duly given upon electronic delivery and/or by US Postal Service to the Parties at the respective addresses above, or as may be supplemented in writing.

**INDEPENDENT CONTRACTOR**-The relationship between Boss and SUBCONTRACTOR is solely that of independent contractors. BOSS shall not be responsible for withholding taxes with respect to SUBCONTRACTOR compensation hereunder. SUBCONTRACTOR shall have no claim against the BOSS hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

**INTERPRETATION AND JURISDICTION**-This Agreement shall be interpreted pursuant to the laws of the State of New York. SUBCONTRACTOR expressly agrees that any action or proceeding to interpret or enforce this Agreement shall be brought exclusively within a state or federal court of competent jurisdiction within the County of Suffolk, State of New York, and SUBCONTRACTOR hereby consents to such jurisdiction and venue.