
MASTER SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement (“Agreement”) is made this _____ (“Effective Date”), by and between GCOM Software LLC, a New York Limited Liability Company (“GCOM”), and _____ (Company Name), a _____ (State of Incorporation) company (“Subcontractor”).

WHEREAS, Subcontractor is engaged in the business of computer programming services; and

WHEREAS, GCOM desires to contract services from Subcontractor;

NOW, THEREFORE, in consideration of their mutual promises made herein, the parties hereby agree as follows:

1. **Subcontractor’s Services**. Subcontractor agrees to render services to GCOM in accordance with the statement of work (“SOW”) attached hereto as Exhibit 1 and incorporated by reference (“Services”). This Agreement shall act as a master agreement under which the Parties can enter into multiple specific transactions by executing an SOW, in the form attached hereto as Exhibit 1. Subcontractor shall submit periodic progress reports to GCOM at least monthly or as otherwise requested by GCOM. The parties agree that GCOM may request services in addition to or different from those services set forth on Exhibit 1, and Subcontractor agrees to render such services under the terms of this Agreement so long as those services do not increase the overall level of effort required of the Subcontractor. Any changes requested by GCOM that increase the Subcontractor’s level of effort shall be subject to the mutual agreement of the parties.

2. **Compensation:**

2.1. **Compensation**. In consideration of those services, GCOM shall pay Subcontractor in accordance with the payment schedule attached hereto as included in Exhibit 1. Subcontractor agrees that such rates shall not increase during the term of this Agreement.

2.2. **Payment Procedure** Subcontractor shall adhere to the following payment procedure:

- If timesheets are used, Subcontractor shall submit properly completed timesheets to the address specified by GCOM, at the end of each workweek. GCOM will review the timesheets, and any timesheets that are approved, GCOM will determine Subcontractor’s fee for the Services based upon approved timesheets submitted hereunder.
- If GCOM has requested Subcontractor to submit invoices, Subcontractor will, not later than ten (10) days from the month ending date, submit a **MONTHLY** invoice with time sheet copies attached to the address designated by GCOM. Invoices will reflect the employee name, number of hours, bill rate per hour, Client department and GCOM branch.
- GCOM will include Subcontractor’s charges in its invoice to Client and will pay Subcontractor’s fee within net 30 days from the receipt of invoice.
- In the event Subcontractor submits invoices any later than thirty (30) days from the end of the respective billing period, Subcontractor acknowledges that such invoices shall be considered untimely. Untimely invoices are subject to nonpayment by Client and that GCOM will be under no obligation

to pay for those Services not timely billed unless and until Client pays the charges.

- Subcontractor will address payment inquiries or disputes to GCOM in a timely fashion and will cooperate in resolving payment disputes related to the Subcontractor's fees.

2.3. Denial of Payment. As part of the Services provided hereunder, Subcontractor shall provide personnel relevant to the Subcontractor's Services ("Designated Personnel"). If any Services rendered by Subcontractor or its Designated Personnel is through an impersonator, misrepresentation of the Designated Personnel's education, experience or other qualifications, or any other fraudulent conduct, GCOM shall have the right to terminate this Agreement immediately, and remove Subcontractor and Designated Personnel from working on the GCOM's contract with the client. Furthermore, in such circumstances, GCOM may deny payment for any Services Designated Personnel purportedly provided. This provision however does not give GCOM any rights to recoup the payments already made.

2.4. *For a Fixed Cost SOW only*, if the Subcontractor fails to maintain the required rate of progress or to complete the work on or before the date in the prime contract, he shall without prejudice to any other right or remedy available under the law, pay compensation, the amount calculated at the rates stipulated on the statement of work or such smaller amount as GCOM may decide (whose decision in writing shall be final and binding), on the amount of the tendered value of the work for every completed day that the progress remains below or that the work remains incomplete.

3. Independent Contractor

3.1. Status as Independent Contractors. This Agreement shall not constitute, create, or otherwise imply an employment, joint venture, partnership, agency or similar arrangement, and nothing contained herein shall be construed as providing for the sharing of profits or losses arising from the efforts of either or both of the parties hereto. Each party to this Agreement shall act as an independent contractor, and neither party shall have the power to act for or bind the other party except as expressly provided for herein. Subcontractor assumes sole responsibility for determining the manner and

means of performance hereunder, and shall be solely responsible for all payment of wages owed to Subcontractor's employees hereunder.

3.2. Ineligible for Employee Benefits. Subcontractor and its employees shall not be eligible for any benefits available to employees of GCOM, including, but not limited to, workers compensation insurance, state disability insurance, unemployment insurance, group health and life insurance, vacation pay, sick pay, severance pay, bonus plans, pension plans, savings plans, and the like.

3.3. Payroll Taxes. No income, social security, state disability or other federal or state payroll tax will be deducted from payments made to Subcontractor under this Agreement. Subcontractor agrees to pay all state and federal taxes and other levies and charges as they become due on account of monies paid to Subcontractor hereunder, and to defend, indemnify and hold GCOM harmless from and against any and all liability resulting from any failure to do so. This paragraph 3.3 shall survive termination of this Agreement.

3.4. Subcontractor and its employees/subcontractors warrant that they can work legally in the United States of America and release indemnify and hold GCOM and Client harmless from any and all liability resulting from the United States Immigration and Naturalization Service or any other government body determining otherwise. Subcontractor shall notify GCOM within five (5) business days should its employee/subcontractor's immigration status change. This paragraph 3.4 shall survive termination of this Agreement.

4. Term. This Agreement shall be effective as of the Effective Date and for one (1) year period ("Initial Term"), and on each anniversary of that date thereafter shall be automatically renewed for successive one (1) year terms thereafter (each a "Renewal Term") unless earlier terminated as provided in paragraph 5 below or either Party provides the other Party with thirty (30) days prior written notice to the end of the Initial Term or the Renewal Term.

5. Termination.

5.1. Either party has the right to terminate this Agreement or the SOW for convenience upon 15 days' notice to Subcontractor.

5.2. Either party shall have the right to terminate this Agreement or the SOW if the other party is in default of any obligation hereunder and such default is not cured within thirty (30) days of receipt of a notice from the non-defaulting party specifying such default.

5.3. This Agreement or the SOW may also be terminated by GCOM without prior notice if (i) GCOM's contract with the client is terminated for any reason or (ii) the client directs GCOM to terminate the Subcontractor's Services under this Agreement or the SOW.

6. Termination of Services and Return of GCOM Property. Upon the expiration or earlier termination of this Agreement, Subcontractor shall immediately terminate the Services hereunder, and shall deliver promptly to GCOM all property relating to the business, work and investigations of GCOM, and to any Work Product (as defined below), patents or copyrights covered by this Agreement. Such property shall include but not be limited to all hardware and software, written, graphical, and recorded material, and any copies, abstracts or summaries thereof. Upon termination of this Agreement for any reason, GCOM shall pay Subcontractor for

all Services performed for which approved time sheets exist and have been timely provided, as set forth in paragraph 2, up to the date of termination within net 30 days from the receipt of invoice.

7. **Standard of Performance.** Subcontractor warrants and represents that it, and its Designated Personnel, possesses the special skill and professional competence, expertise and experience to undertake the obligations imposed by this Agreement. Subcontractor agrees to perform in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the profession, and to devote such time as is necessary to perform the Services required under this Agreement. *For Fixed Cost SOW only*, Subcontractor work or deliverables not in compliance with the preceding sentence or otherwise not accepted by client will be re-performed by Subcontractor at no additional cost to GCOM. Subcontractor agrees to remove and replace any of its Designated Personnel who, in the sole judgment of GCOM, are not performing their responsibilities at an acceptable level.

8. **Client Interface.** So long as the client has no objection, Subcontractor shall be permitted to attend any meetings between GCOM and the client in which there will be substantive discussions concerning Subcontractor's areas of responsibility under this Agreement. Subcontractor agrees that it will not engage in any communication with the client regarding this Agreement, GCOM's contract with the client or any issues relating to those agreements outside the presence of GCOM without the advance written consent of GCOM.

9. **Conflicts of Interest.**

9.1. Subcontractor warrants and represents that (i) the work hereunder will not create an actual or apparent conflict of interest with any other work it might perform, (ii) Subcontractor is not presently subject to any agreement with a competitor or potential competitor of GCOM or GCOM's clients or with any other party that will prevent Subcontractor from performing in full accord with this Agreement, (iii) Subcontractor's agents, employees, and contractors, that shall be performing the work set forth in Exhibit 1 on behalf of Subcontractor, are not presently subject to any agreement, including, but not limited to a non-compete agreement or non-solicitation agreement, with a competitor or potential competitor of GCOM or with any other party that will prevent Subcontractor's agents, employees, and contractors from performing in full accord with this Agreement, and (iv) Subcontractor is not subject to any statute, regulation, ordinance or rule that will limit its ability to perform the obligations under this Agreement.

9.2. In the event that any person or entity advises GCOM of the existence of any agreement, such as a non-compete or non-solicitation, pertaining to the Subcontractor or Subcontractor's agents, employees, or contractors, which would prevent the Subcontractor or Subcontractor's agents, employees, and contractors from performing in full accord with this Agreement, then Subcontractor shall indemnify, defend, and hold harmless GCOM from any action, suit, claim or proceeding by any party against GCOM based upon Subcontractor's alleged violation of the Subcontractor's representations and warranties under Section 9.1 including all

costs, expenses and attorneys' fees, damages, judgments, fines and amounts paid in settlement, and any other amounts actually incurred in connection with the action. Such indemnification is joint and several with any other party GCOM may also have the right to seek indemnification from for this matter.

9.3. Moreover, in the event that any person or entity advises GCOM of the existence of any agreement, such as a non-compete or non-solicitation, pertaining to Subcontractor's agent, employee or contractor, which would prevent such individual from performing in full accord with this Agreement, as determined in GCOM's sole discretion, then GCOM shall have the right to request in writing that such agent, employee or contractor of the Subcontractor should cease to be engaged in providing the Services. If so requested, that individual will be removed by Subcontractor within 5 days. Subcontractor will within 5 days of removal, at its cost, provide a suitably qualified replacement, all such replacements to be subject to the prior consent of GCOM. Subcontractor shall have the option if any person or entity advises Subcontractor of the existence of any agreement, such as a non-compete or non-solicitation, pertaining to Subcontractor's agent, employee or contractor, which would prevent such individual from performing in full accord with this Agreement, then Subcontractor shall also have the right to remove the individual. In which case, Subcontractor will promptly, at its cost, provide a suitably qualified replacement, all such replacements to be subject to the prior consent of GCOM.

9.4. The parties agree that Subcontractor shall be free to accept other work during the term hereof; provided, however, that such other work shall not interfere with the provision of Services hereunder, and further provided that, without the prior consent of GCOM, Subcontractor shall not accept other work with any competitor of GCOM that creates a conflict of interest with GCOM.

10. Proprietary Information. Subcontractor acknowledges that it may have access to and become acquainted with confidential and other information proprietary to GCOM including, but not limited to, information concerning GCOM, its operations, customers, business and financial condition, as well as information with respect to which GCOM has an obligation to maintain confidentiality (collectively referred to herein as "Proprietary Information"). Subcontractor agrees not to disclose, directly or indirectly, to anyone, or to use or let others use, for any purpose whatsoever, any Proprietary Information, of any type, whether or not designated confidential or proprietary, acquired in the course of performing under this Agreement.

11. Restrictive Covenants.

11.1. Recognizing that the parties respective employees and contractors shall be working closely with the other party hereto, the parties agree that, during the term of this Agreement and for a period of one (1) year from the termination of this Agreement, neither party shall actively solicit employees formerly contracted under this Agreement for employment or for the provision of services on an independent contractor basis.

11.2. Recognizing (i) the special nature of the relationship existing, or that will exist, between GCOM and its clients and between GCOM and the personnel and contractors that it employs or retains and (ii) that the establishment of such relationships by Employer is a costly and time-consuming endeavor, and (iii) that Subcontractor may have access to GCOM Proprietary Information, Subcontractor agrees to the following:

For a period of two (2) years following the termination of this Agreement, Subcontractor agrees not to solicit, submit proposals for or otherwise solicit follow-on or re-bid opportunities or work directly or indirectly with the customer set forth on the SOW or form any contractual relationship with the customer for employment or for the provision of services on an independent contractor basis.

12. **Injunctive Relief.** The Subcontractor and its employee agrees that because a violation of its obligations made in Paragraphs 10 or 11 hereunder would cause GCOM harm which could not be adequately compensated by monetary damages, GCOM shall be entitled to an immediate injunction preventing Subcontractor or its employee from further violation of this restriction, without bond. The parties consent to jurisdiction in the Supreme Court, Albany County as the proper venue an application for such injunction. In the event that a court of competent jurisdiction shall determine that any portion of Paragraphs 10 or 11 are unreasonable or arbitrary, such court may reform the objectionable portion so that it may be enforced to the extent deemed reasonable under the circumstances.

13. **Work Product**

13.1. **Disclosure of Work Product.** Subcontractor agrees promptly to disclose and assign to GCOM all work product, inventions, discoveries, ideas, concepts, designs, data and information (including without limitation products, software, information systems, processes, methods, formulas and techniques, as well as improvements thereof or know-how related thereto), regardless of whether patentable or copyrightable, which are made or conceived by Subcontractor, whether solely or jointly with others, during the term of this Agreement (1) in the course of work performed for GCOM or (2) with the use of GCOM time, material, Proprietary Information or facilities. All such work product, inventions, discoveries, ideas, concepts, designs, data and information are referred to herein as "Work Product." All Work Product will be deemed work made for hire on behalf of GCOM. Subcontractor agrees that all such Work Product shall from inception be the exclusive property of GCOM or its designee, whether or not patent or copyright applications are filed thereon, and Subcontractor hereby expressly waives any right or interest it may have therein. Subcontractor agrees to provide, without additional compensation, such assistance as may reasonably be required by GCOM in obtaining patents and copyrights for such Work Product in any and all countries, and in enforcing any GCOM rights and interests relating to such Work Product or to any patents or copyrights resulting therefrom, including without

limitation the execution by Subcontractor of all applications, assignments and other instruments as GCOM may request.

13.2. No Restriction on Use or Disclosure. Subcontractor warrants and represents that all of the Work Product, findings and recommendations disclosed to GCOM during the course of this Agreement may lawfully be disclosed by Subcontractor and are not subject to any patent, license agreement, confidentiality agreement, trade secret law or any other restriction on use by or disclosure to GCOM.

14. **Indemnification.**

14.1. *Mutual Indemnification.* Each party (“Indemnitor”) agrees to defend, indemnify and hold harmless the other (“Indemnitee”) from and against any and all claims, losses, liabilities or expenses (including without limitation attorneys' fees) which may arise, in whole or in part, out of (i) the negligence or willful misconduct of the Indemnitor, its employees or agents or (ii) a breach by the Indemnitor of its obligations under this Agreement

14.2. *Subcontractor Indemnification.* In addition to the mutual indemnification set forth in paragraph 14.1. Subcontractor and its officers, directors, and owners shall be responsible for and defend, indemnify and hold harmless GCOM, its officers, directors, subcontractors, and employees from all claims demands, damages, costs, expenses, judgments, attorney fees or other losses that may be asserted by any person or entity, and that arise out of or are made in connection with any claims against GCOM related to Subcontractor’s employees, agents, and independent contractors including, but not limited to claims under the Age Discrimination in Employment Act, as amended, the Employee Retirement Income Security Act of 1974, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Family and Medical Leave Act, the Equal Pay Act, the Fair Labor Standards Act, the Rehabilitation Act of 1973, the Occupational Safety and Health Act, the New York State Human Rights Law, New York Labor Law, the New York Equal Pay Act, the New York Executive Law, state workers compensation laws, or any and all other similar federal, state, or local civil rights statute, ordinance, rule, or regulation.

14.3. *Notice of Indemnification.* If a claim by a third party is made against either party and if such party (the “Indemnitee”) intends to seek indemnity with respect to such claim under this paragraph 14, the Indemnitee shall promptly notify the other party (the “Indemnifier”) of such claim. The Indemnifier shall have thirty (30) days after receipt of the above-mentioned notice to undertake, conduct and control, through counsel of such party’s own choosing (subject to the consent of the Indemnitee, such consent not to be unreasonably withheld) and at such party’s expense, the settlement or defense of the claim, and the Indemnitee shall cooperate with the Indemnifier in connection with such efforts; provided that: (i) the Indemnifier shall not by this Agreement permit to exist any lien, encumbrance or other adverse charge upon any asset of the Indemnitee, (ii) the Indemnifier shall permit the Indemnitee to participate in such settlement or defense through

counsel chosen by the Indemnitee, provided that the fees and expenses of such separate counsel shall be borne by the Indemnitee, and (iii) the Indemnifier shall agree promptly to reimburse the Indemnitee for the full amount of any loss directly resulting from such claim and all related expense incurred by the Indemnitee pursuant to this Article (other than the costs incurred by the Indemnitee for separate counsel under clause (ii)). So long as the Indemnifier is reasonably contesting any such claim in good faith, the Indemnitee shall not pay or settle any such claim. If the Indemnifier does not notify the Indemnitee within thirty (30) days after receipt of the Indemnitee's notice of a claim of indemnity under this Article that such party elects to undertake the defense of such claim, the Indemnitee shall have the right to contest, settle or compromise the claim in the exercise of the Indemnitee's exclusive discretion at the sole expense of the Indemnifier.

The obligations under this paragraph 14 shall survive termination of this Agreement.

15. **Insurance.** Subcontractor shall be solely responsible for obtaining workers compensation insurance for its employees and agents and such other insurance as may be required by applicable laws. Subcontractor agrees to carry, for the term of this Agreement, professional liability, general liability and automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence. Upon request of GCOM, Subcontractor shall furnish certificates evidencing any and all such insurance.

16. **Compliance.** Subcontractor represents that it is not presently suspended or debarred or proposed for suspension or debarment by any government agency. Subcontractor agrees to comply with all federal, state, and local statutes, regulations, ordinances and rules as well as any and all GCOM policies and procedures relating, directly or indirectly, to Subcontractor's performance hereunder, including, but not limited to all applicable laws pertaining to equal employment opportunity and procurement integrity.

17. **Acknowledgment by Subcontractor's Employee(s).** Subcontractor shall cause its employee or employees who are performing the Services pursuant to this Agreement, to sign the Acknowledgment form attached hereto as Exhibit 2, which shall be incorporated herein and made a part of this Agreement.

18. **Miscellaneous.**

18.1. **Survival.** The obligations assumed by Subcontractor pursuant to paragraphs 9, 10, 11, 12, 13, and 14 hereof shall survive the expiration or earlier termination of this Agreement.

18.2. **Attorneys' Fees.** In the event suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of the costs of suit, and not as damages, reasonable attorneys' fees to be fixed by the Court.

18.3. Waiver, Modification and Amendment. No provision of this Agreement may be waived unless in writing, signed by all of the parties hereto. Waiver of any one provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other provision. This Agreement may be modified or amended only by a written agreement executed by all of the parties hereto.

18.4. Governing Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of New York. The parties agree that the Supreme Court in Albany County, State of New York is proper venue for any action arising out this Agreement.

18.5. Assignment; Subcontracting. Neither this Agreement nor any duties or obligations hereunder shall be assigned, transferred, or subcontracted by Subcontractor without the prior written approval of GCOM, which approval may be withheld in the sole and absolute discretion of GCOM.

18.6. Notices. All notices under this Agreement will be in writing and will be delivered by personal service, facsimile or certified mail, postage prepaid, or overnight courier to such address as may be designated from time to time by the relevant party, which initially shall be the address set forth on the signature page to this Agreement. Any notice sent by certified mail will be deemed to have been given five (5) days after the date on which it is mailed. All other notices will be deemed given when received. No objection may be made to the manner of delivery of any notice actually received in writing by an authorized agent of a party.

18.7. Records; Inspection. Subcontractor shall maintain books, records, and documents in accordance with accounting procedures and practices which sufficiently and properly reflect the services rendered and funds expended in connection with this Agreement.

18.8. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any manner.

18.9. Publicity. Neither party shall make any public announcement concerning this Agreement without the advance approval of the other party. Notwithstanding the foregoing, if the parties are unable to agree on a mutually acceptable announcement, a party may nevertheless issue a press release if it is advised by counsel that such release is necessary to comply with applicable securities or similar laws.

18.10. Counterparts. This Agreement may be executed in several counterparts by different parties, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement shall be effective and binding upon all parties hereto as of the date when all parties have executed a counterpart of this Agreement. For the purposes of this Agreement, facsimile signatures and PDF signatures will be considered as original signatures and will be relied upon as if they were original signatures.

18.11. Addendums. The following Addendums shall be attached to the contract and made a part hereof: (Directive 31: Subcontractor shall adhere to Directive 31 if you work for the city of New York and are on a Time and Material project)

18.12. Entire Agreement. This Agreement, and the Exhibits and Addendums referred to herein, contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior discussions, representations and understandings, whether oral or written.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives.

GCOM Software LLC
24 Madison Ave., Extension
Suite # 1
Albany, NY 12203
Telephone: (518) 869-1671
Fax: (518) 869-1673

Signature:
Print Name:
Date:

Company Name:
Address 1:
Address 2:
City/State/Zip:
Telephone:
Fax:

Signature:
Print Name:
Date: