SOFTWARE DEVELOPMENT SUBCONTRACTOR AGREEMENT

This **Subcontractor Agreement** (this "Agreement") is made as of this _____ day of _____, 20, (the "Effective Date") by and between:

Primary Contractor: _____ located at
_____ [Address] ("Primary Contractor") and

Subcontractor: _____ located at
_____ [Address] ("Subcontractor").

Primary Contractor and Subcontractor may each be referred to in this Agreement as a "Party" and collectively as the "Parties."

1. Services. (Check one)

☐ Describe Services in the agreement: Subcontractor shall provide the following services to Primary Contractor (the "Services"):
_____
_____.
In addition, Subcontractor shall perform such other duties and tasks, or changes to the Services, as may be agreed upon by the Parties.

☐ Describe Services in Exhibit: Subcontractor shall provide to Primary Contractor the services as described in Exhibit A attached to this Agreement (the "Services").

2. Compensation. In consideration for Subcontractor's performance of the Services, Primary Contractor shall pay Subcontractor: (Check one)

☐ A Periodic Fixed Wage. Primary Contractor shall pay Subcontractor $_____ (Check one) ☐ per hour ☐ per week ☐ per month ☐ per year ☐ other: _____. Subcontractor will be paid: (Check one)
☐ Every week. Subcontractor will be paid on _____ [Day of the week] of every week.
☐ Every month. Subcontractor will be paid on the _____ [Day of the month] of every month.
☐ After Subcontractor sends an invoice. Subcontractor will be paid within _____ days after receiving Subcontractor's invoice. Subcontractor will submit invoices for payment (Check one) ☐ at the end of every week ☐ on the _____ of every month ☐ within _____ days after completion of the Services ☐other: _____.
☐ Other: _____

☐ A Set Fee. Primary Contractor shall pay Subcontractor $_____: (Check one)
☐ After the Subcontractor completes the services.

☐ Within _____ days after receiving Subcontractor's invoice. Subcontractor will submit invoices for payment (Check one) ☐ at the end of every week ☐ on the _____ of every month ☐ within _____ days after the completion of the Services ☐ other: _____.

☐ Other: _____

☐ <u>After Completing Certain Milestones</u>. Primary Contractor shall pay Subcontractor according to the following schedule:

$_____ for _____ [Milestone description]

$_____ for _____ [Milestone description]

Subcontractor will be paid: (Check one)

☐ After the completion of each milestone.

☐ Within _____ days after receiving Subcontractor's invoice. Subcontractor will submit invoices for payment (Check one) ☐ at the end of every week ☐ on the _____ of the month ☐ within _____ days after completion of the Services ☐ other: _____.

☐ <u>Other</u>. _____

☐ In the event this Agreement pertains to a public works project subject to prevailing wage laws, the Subcontractor shall comply with all applicable federal, state, and local prevailing wage requirements. The Subcontractor shall be responsible for maintaining accurate payroll records as required by law and providing any necessary certifications or documentation to the Primary Contractor or relevant authorities. (Optional)

3. Expenses. (Check one)

☐ Subcontractor will be reimbursed. Except as otherwise specified in this Agreement, Primary Contractor shall reimburse Subcontractor for all pre-approved, reasonable and necessary costs and expenses incurred in connection with the performance of the Services.

☐ Subcontractor will NOT be reimbursed. All costs and expenses incurred by Subcontractor in connection with the performance of the Services shall be the sole responsibility of and paid by Subcontractor.

4. Term and Termination. Subcontractor's engagement with Primary Contractor under this Agreement shall commence on _____, 20.

<u>Termination</u> (Check one)

☐ After all of the Services are completed. The Parties agree and acknowledge that this Agreement and Subcontractor's engagement with Primary Contractor under this Agreement shall terminate upon the completion by Subcontractor of the Services.

☐ After a fixed period of time. The Parties agree and acknowledge that this Agreement and Subcontractor's engagement with Primary Contractor under this Agreement shall terminate after (Check one)

☐ _____ days ☐ _____ months ☐ other: _____.

☐ On a specific date. The Parties agree and acknowledge that this Agreement and Subcontractor's engagement with Primary Contractor under this Agreement shall terminate on _____, 20.

☐ At will. Subcontractor acknowledges and agrees that the engagement with Primary Contractor is at will, subject to being terminated at the discretion of Primary Contractor at any time, (Check one) ☐ without prior notice ☐ upon _____ days prior written notice to Subcontractor. In addition, this Agreement may be terminated by Subcontractor upon _____ days prior written notice to Primary Contractor.

At the time of termination, the Subcontractor agrees to return all Primary Contractor property used in performance of the Services, including but not limited to computers, cell phones, keys, reports and other equipment and documents. Subcontractor shall reimburse Primary Contractor for any Primary Contractor property lost or damaged in an amount equal to the market price of such property.

5. Independent Contractor. The Parties agree and acknowledge that Subcontractor is an independent contractor and is not, for any purpose, an employee of Primary Contractor. Subcontractor does not have any authority to enter into agreements or contracts on behalf of Primary Contractor, and shall not represent that it possesses any such authority. Subcontractor shall not be entitled to any of Primary Contractor's benefits, including, but not limited to, coverage under medical, dental, retirement or other plans. Primary Contractor shall not be obligated to pay worker's compensation insurance, unemployment compensation, social security tax, withholding tax or other taxes or withholdings for or on behalf of the Subcontractor in connection with the performance of the Services under this Agreement. Nothing contained in this Agreement shall be deemed or construed by the Parties to create the relationship of a partnership, a joint venture or any other fiduciary relationship.

6. **Confidentiality**. (Check one)

☐ Subcontractor will <u>NOT</u> be exposed to confidential information.

☐ Subcontractor will be exposed to confidential information.

a. **Confidential and Proprietary Information**. In the course of performing the Services, Subcontractor will be exposed to confidential and proprietary information of Primary Contractor. "Confidential Information" shall mean any data or information that is competitively sensitive material and not generally known to the public, including, but not limited to, information relating to development and plans, marketing strategies, finance, operations, systems, proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, data, databases, inventions, know-how, trade secrets, customer lists, customer relationships, customer profiles, supplier lists, supplier relationships, supplier profiles, pricing, sales estimates, business plans and internal performance results relating to the past, present or future business activities, technical information, designs, processes, procedures, formulas or improvements, which Primary Contractor considers confidential and proprietary. Subcontractor acknowledges and agrees that the Confidential Information is valuable property of Primary Contractor, developed over a long period of time at substantial expense and that it is worthy of protection.

b. **Confidentiality Obligations**. Except as otherwise expressly permitted in this Agreement, Subcontractor shall not disclose or use in any manner, directly or indirectly, any Confidential Information either during the term of this Agreement or at any time thereafter, except as required to perform the Services or with Primary Contractor's prior written consent.

c. **Rights in Confidential Information**. All Confidential Information disclosed to Subcontractor by Primary Contractor (i) is and shall remain the sole and exclusive property of Primary Contractor, and (ii) is disclosed or permitted to be acquired by Subcontractor solely in reliance on Subcontractor's agreement to

maintain the Confidential Information in confidence and not to use or disclose the Confidential Information to any other person. Except as expressly provided herein, this Agreement does not confer any right, license, ownership or other interest in or title to the Confidential Information to Subcontractor.

d. **Irreparable Harm**. Subcontractor acknowledges that use or disclosure of any Confidential Information in a manner inconsistent with this Agreement will give rise to irreparable injury for which damages would not be an adequate remedy. Accordingly, in addition to any other legal remedies which may be available at law or in equity, Primary Contractor shall be entitled to equitable or injunctive relief against the unauthorized use or disclosure of Confidential Information. Primary Contractor shall be entitled to pursue any other legally permissible remedy available as a result of such breach, including but not limited to, damages, both direct and consequential. In any action brought by Primary Contractor under this Section, Primary Contractor shall be entitled to recover its attorney's fees and costs from Subcontractor.

7. Ownership of Work Product. (Check one)

☐ Primary Contractor has ownership. The Parties agree that all work product, information or other materials created and developed by Subcontractor in connection with the performance of the Services under this Agreement and any resulting intellectual property rights (collectively, the "Work Product") are the sole and exclusive property of Primary Contractor. The Parties acknowledge that the Work Product shall, to the extent permitted by law, be considered a "work made for hire" within the definition of Section 101 of the Copyright Act of 1976, as amended, (the "Copyright Act") and that Primary Contractor is deemed to be the author and is the owner of all copyright and all other rights therein. If the work product is not deemed to be a "work made for hire" under the Copyright Act, then Subcontractor hereby assigns to Primary Contractor all of Subcontractor's rights, title and interest in and to the Work Product, including but not limited to all copyrights, publishing rights and rights to use, reproduce and otherwise exploit the Work Product in any and all formats, media, or all channels, whether now known or hereafter created.

☐ Subcontractor has ownership. The Parties agree that all work product, information or other materials created and developed by Subcontractor in connection with the performance of the Services under this Agreement and any resulting intellectual property rights (collectively, the "Work Product") are the sole and exclusive property of Subcontractor. Subcontractor grants to Primary Contractor a limited, non-exclusive license to use the Work Product. The Work Product is to be used only by Primary Contractor, and Primary Contractor may not assign, transfer, lease or sublicense any Work Product to any person or entity without Subcontractor's prior written consent.

8. Insurance. (Check one)

☐ For the term of this Agreement, Subcontractor shall obtain and maintain a policy of insurance, with appropriate and adequate coverage and limits, to cover any claims for bodily injury, property damage or other losses which might arise out of any negligent act or omission committed by Subcontractor or Subcontractor's employees or agents, if any, in connection with the performance of the Services under this Agreement.

The Subcontractor shall, at its own expense, obtain and maintain the following types and amounts of insurance coverage for the duration of this Agreement: (a) Commercial General Liability Insurance with a minimum limit of $_____ _____ [Amount in words] per occurrence, (b) Workers' Compensation Insurance in accordance with applicable state law, and (c) any other insurance required by

law or reasonably requested by the Primary Contractor. The Subcontractor shall provide the Primary Contractor with certificates of insurance as evidence of the required coverages.

☐ For the term of this Agreement, Subcontractor is NOT required to obtain and maintain a policy of insurance for injuries or damages.

9. **Lien Rights and Procedures**. The Subcontractor shall have the right to file a mechanic's or materialman's lien on the property where the Services are performed in accordance with applicable state and local lien laws if the Subcontractor does not receive payment for the Services provided under this Agreement. The Subcontractor shall provide the Primary Contractor with all necessary notices required by law and shall comply with all statutory procedures for perfecting and enforcing such lien rights. The Primary Contractor shall have the right to contest the validity or amount of any lien filed by the Subcontractor.

10. **Non-Compete**. (INITIAL if you want to include this clause. CROSS OUT if you do not.)
_____ Subcontractor agrees and covenants that during the term of this Agreement, and for a period of _____ months following the termination of this Agreement, Subcontractor will not, directly or indirectly, perform or engage in the same or similar activities as were performed for Primary Contractor for any business that is directly or indirectly in competition with Primary Contractor.

11. **Non-Solicit**. (INITIAL if you want to include this clause. CROSS OUT if you do not.)
_____ Subcontractor agrees and covenants that for a period of _____ months following the termination of this Agreement, Subcontractor will not, directly or indirectly, solicit any officer, director or employee, or any customer, client, supplier or vendor of Primary Contractor for the purpose of inducing such party to terminate its relationship with Primary Contractor in favor of Subcontractor or another business directly or indirectly in competition with Primary Contractor.

12. **Mutual Representations and Warranties**. Both Primary Contractor and Subcontractor represent and warrant that each Party has full power, authority and right to execute and deliver this Agreement, has full power and authority to perform its obligations under this Agreement, and has taken all necessary action to authorize the execution and delivery of this Agreement. No other consents are necessary to enter into or perform this Agreement.

13. **Subcontractor Representation and Warranties**. Subcontractor represents and warrants that it has all the necessary licenses, permits and registrations, if any, required to perform the Services under this Agreement in accordance with applicable federal, state and local laws, rules and regulations and that it will perform the Services according to the Primary Contractor's guidelines and specifications and with the standard of care prevailing in the industry.

14. **Indemnification**. (INITIAL if you want to include this clause. CROSS OUT if you do not.)
_____ The Subcontractor shall indemnify and hold harmless Primary Contractor from any damages, claims, liabilities, loss and expenses, including reasonable attorney's fees, arising out of any act or omission of Subcontractor in performing the Services or the breach of any provision of this Agreement by Subcontractor.

15. **Governing Law**. The terms of this Agreement and the rights of the Parties hereto shall be governed exclusively by the laws of the State of _____, without regarding its conflicts of law provisions.

16. Disputes. Any dispute arising from this Agreement shall be resolved through: (Check one)

☐ Court litigation. Disputes shall be resolved in the courts of the State of _____.

☐ If either Party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other Party its expenses (including reasonable attorneys' fees and costs) incurred in connection with the action and any appeal.

☐ Binding arbitration. Binding arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

☐ Mediation.

☐ Mediation, then binding arbitration. If the dispute cannot be resolved through mediation, then the dispute will be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

18. Assignment. The interests of Subcontractor are personal to Subcontractor and cannot be assigned, transferred or sold without the prior written consent of Primary Contractor.

19. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, and agreements of the Parties.

20. Amendments. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by both of the Parties.

21. Notices. Any notice or other communication given or made to either Party under this Agreement shall be in writing and delivered by hand, sent by overnight courier service, or sent by certified or registered mail, return receipt requested, to the address stated above or to another address as that Party may subsequently designate by notice, and shall be deemed given on the date of delivery.

22. Waiver. Neither Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing. Waiver by either Party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any subsequent or other breach or violation.

23. Further Assurances. At the request of one Party, the other Party shall execute and deliver such other documents and take such other actions as may be reasonably necessary to effect the terms of this Agreement.

24. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first written above.

Primary Contractor Name	**Primary Contractor Representative** Signature	**Primary Contractor Representative** Name and Title
Subcontractor Name	**Subcontractor Representative** Signature	**Subcontractor Representative** Name and Title