

SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement ("Agreement") is made this _____, Current Date 00/00/00
by and between GCOM Software, Inc., a New York corporation ("GCOM"), and
_____, a _____ company
Company's full legal name State of Incorporation
("Subcontractor"), with reference to the following:

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 attached hereto as Exhibit 1 and incorporated by reference. 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. a. Compensation. In consideration of those services, GCOM shall pay Subcontractor in accordance the Payment Schedule attached hereto as Exhibit 1. Subcontractor agrees that such rates shall not increase during the term of this Agreement.

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

- If timesheets are used, Subcontractor will submit properly completed and approved timesheets to the address specified by GCOM, at the end of each workweek, and GCOM will determine Subcontractor's charges 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 charges within net 30 days from the receipt of invoice.
- Subcontractor will submit all charges to GCOM no later than thirty (30) days from the end of the respective billing period. Subcontractor acknowledges that 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 charges.

c. **Denial of Payment.** If a position with GCOM or its Client is obtained by Contractor or its Designated Personnel 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 the Designated Personnel and/or Contractor and to deny payment for any services Designated personnel purportedly provided.

3. a. **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.

b. **Ineligible for Employee Benefits.** Subcontractor and its employees shall not be eligible for any benefit 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.

c. **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.

4. **Term.** This Agreement shall be effective as _____
Current Date 00/00/00

and shall continue in effect for one year, unless earlier terminated as provided in paragraph 5 below. This agreement shall continue for successive period of one year's duration on the same terms and conditions unless either party has given at least 30 days' notice to the other party that this agreement will terminate at the end of initial period.

5. Termination. Either party has the right to terminate this Agreement for convenience upon 15 days' notice to Subcontractor. Either party shall have the right to terminate this Agreement 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. This Agreement may also be terminated by GCOM without prior notice if (i) the GCOM's Prime Contract with the Client is terminated for any reason or (ii) the Client directs GCOM to terminate the Subcontractor's services under this Agreement.

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.

7. Standard of Performance. Subcontractor warrants and represents that it 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. Subcontractor agrees to remove and replace any of its 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, the Prime Contract or any issues relating to those agreements outside the presence of GCOM without the advance written consent of GCOM.

9. Conflicts of Interest. 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 with any other party that will prevent Subcontractor from performing in full accord with this Agreement and (iii) Subcontractor is not subject to any statute, regulation, ordinance or rule that will limit its ability to perform the obligations under this Agreement. 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. Non-Solicitation.

a. 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.

b. For a period of two (2) years following the termination of this Agreement, Subcontractor agrees not to solicit or work directly or indirectly any of GCOM's customer(s) or clients where Subcontractor's employees, consultants, or agents provided services to, or formed any contractual relationship with such customer or client of GCOM's during this Agreement for employment or for the provision of services on an independent contractor basis. The Name of specific customer may vary for each SOW (Exhibit 1) and will be defined in Exhibit 1.

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. Future Opportunities. In recognition of the access Subcontractor may have to GCOM Proprietary Information, Subcontractor agrees that it will not submit proposals for or otherwise solicit follow-on or re-bid opportunities directly or indirectly with any GCOM's customer(s) where Subcontractor's employees/ consultants provided services or form any contractual relationship with them for a period of at least two (2) years following the termination of this agreement

14. a. 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." 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.

b. 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.

15. 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.

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. Proof of right to work in USA must be provided before the first payment will be made by GCOM.

16. 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.

17. 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.

18. Prime Contract. Subcontractor and GCOM agree that the services provided hereunder are subject to the terms of the Prime Contract between GCOM and the Client.

19. Acknowledgment by Subcontractor's Employee(s). Subcontract shall cause its employee or employees who are provided to GCOM 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.

20. Miscellaneous.

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

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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.

i. 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.

j. Entire Agreement. This Agreement 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, Inc.

Company Name

24 Madison Ave., Extension

Street Address

Suite # 4

Street Address #2

Albany, NY 12203

City, State, Zip

Telephone (518) 869-1671

Telephone

Fax (518) 869-1673

Fax

Company Name

Street Address

Street Address #2

City, State, Zip

Telephone

Fax

Signature

Print Name

Title

Signature

Print Name

Title