

## **SUBCONTRACTOR AGREEMENT**

This agreement is mutually executed as of date \_\_\_\_\_ by and between  
\_\_\_\_\_  
(Hereinafter called "TSI" or "Company") located at  
NY 11801 and \_\_\_\_\_  
(hereinafter called "Subcontractor"). "Subcontractor" is located at  
\_\_\_\_\_. Subcontractor's Employer  
Identification Number (EIN / Tax ID) is \_\_\_\_\_. In consideration of the  
mutual promises and covenants contained herein, the parties hereto agree as follows:

### **ORDERING**

"Subcontractor" will provide services for TSI as listed herein and hereinafter referred to as "services". If any provisions of Appendix 'A' conflict with any provisions set forth in this Agreement, the provisions of Appendix 'A' shall govern. Additional personnel may be included under this Agreement by executing another Appendix 'A'.

### **SCOPE OF SERVICES**

TSI wishes to engage "Subcontractor's employees/consultants to perform work for TSI or TSI's customers at defined locations. Subcontractor's employees/consultants agree to perform such duties and contribute such hours of work as may be assigned to the employees/consultants by TSI or TSI's customer during the term of the Subcontractor's agreement with TSI.

### **TERM**

The term of this agreement shall be as stated in Appendix A and shall be renewable upon written agreement between "Subcontractor" and TSI. The term may be extended for a mutually acceptable period and at mutually agreeable rates. During any term of this agreement or extension thereof, "Subcontractor" agrees not to remove the employees/consultants from the assigned workplace for any reason other than serious personal injury or sickness

### **TERMINATION**

This agreement may be terminated immediately by TSI for poor performance, poor conduct, poor work habits or inability to work as a team member on the part of "Subcontractor" employees/consultants, as determined solely by TSI or TSI's end client. In addition, this agreement may be terminated by TSI upon 5 days written notification by TSI or TSI's end client without specific reason. Notwithstanding the above, it is TSI's intent and desire for this agreement to run full term and be extended.

## **PAYMENT TERMS / INVOICING**

TSI agrees to pay “Subcontractor” in accordance with the rates outlined in the rate schedule in Appendix A. “Subcontractor” shall invoice TSI at the end of each month. The invoice shall be for hours worked (or the work performed per Appendix “A”) and any other authorized and approved expenditures as agreed in writing by TSI, which occurred during the calendar month. All services (time expended or other services) must be validated by TSI and/or TSI’s client and made part of the invoice submitted to TSI. Payment to “Subcontractor” to be made within 30 days of TSI receiving an invoice or within ten business days after receiving payment from TSI’s client. “Subcontractor” warrants services to client for a period of 180 days from beginning assignment. “Subcontractor” agrees to hold the rate being charged for the candidate (or project) without an increase for a period of at least eighteen months from start of assignment. “Subcontractor” agrees to maintain the candidate on the assignment for the entire duration of the project.

## **OTHER DIRECT COSTS**

Travel to and from Subcontractor’s home or base address and for day-to-day work is not billable to TSI. However, special travel to other locations required by TSI is billable at prevailing rates if agreed to in writing.

It is agreed and understood that “Subcontractor” employees may be assigned to a location other than “Subcontractor” or TSI’s facility. When the employee or consultant is required to travel from their normally assigned place or work, all associated travel expenses and living expenses will be reimbursed on a cost reimbursement basis when such expenses have been approved in writing and in advance of their occurrence by TSI. Receipts for all such travel and other expenses are required to be provided to TSI.

TSI’s client or its client, if applicable, will provide materials, work space and computer time to Subcontractor’s Employee pursuant to all services performed.

## **INSURANCE REQUIREMENTS**

Subcontractor shall be responsible for carrying following insurance at all times during the course of this agreement. Subcontractor shall add “Top Source International, Inc.” as additional insured to its policy and further comply with any other language as required in the future due to flow down provisional request by its client or otherwise.

Commercial General Liability Each Occurrence -	\$2,000,000
Damage to Rent	
Premises (Each Occurrence)	\$300,000

General Liability	Med Exp (any one person)	\$10,000
	Personal & Adv. Injury	\$2,000,000
General Aggregate Limit	General Aggregate	\$4,000,000
	Products –Comp/OF Agg	\$4,000,000
Automobile Liability	Combined single Limit	\$2,000,000
	(Ea accident)	
Umbrella Liab	Each Occurrence	\$5,000,000
	Aggregate	\$5,000,000
E&O Professional liability		\$1,000,000
	Aggregate	\$3,000,000
3 <sup>rd</sup> Party Fidelity Crime Bond		\$2,000,000
	Aggregate	\$2,000,000
Workman's Comp	Each Occurrence	\$1,000,000

### **NON-COMPETE**

It is expressly agreed between “Subcontractor” and TSI that “Subcontractor”, for a period during and for a period of two years from the termination of this contract, will not solicit, employ, nor contract with any customers, associates or employees of the other party which are related to this contract. Breaching this provision shall entitle TSI to fees and compensation for loss of business in addition all costs and fees involved in pursuing and/or enforcing this clause. The parties agree and acknowledge that all provisions of this

Agreement shall be governed by and construed in accordance with the laws of the State of New York exclusively and without reference to principles of conflict of laws.

TSI will not hire "Subcontractor" employee for a period of one year from the termination of this contract.

## **CONFIDENTIALITY**

"Subcontractor" agrees to maintain in confidence and not to disclose to any person, firm or corporation, without TSI's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process or operations of TSI or of TSI's clients. "Subcontractor" further agrees to maintain in confidence and not to disclose to any person, firm or corporation any data, information, technology or material developed or obtained by "Subcontractor" during the term of this Agreement. The covenants contained in this section shall survive the termination of this Agreement for whatever cause.

A. Definition. "Confidential Information "means any non-public information that relates to the actual or anticipated business or research and development of the Company (TSI or its Client), technical data, trade secrets or know-how, including, but not limited to, research, product plans or other information regarding Company's products or services and markets therefor, customer lists and customers (including, but not limited to, customers of the Company on whom Subcontractor called or with whom Subcontractor became acquainted during the term of Subcontractor's employment), software, developments, inventions, processes, formulas, technology, designs, drawing, engineering, hardware configuration information, marketing, finances or other business information. Confidential Information does not include information that (i) is known to Subcontractor at the time of disclosure to Subcontractor by the Company as evidenced by written records of Subcontractor, (ii) has become publicly known and made generally available through no wrongful act of Subcontractor or (iii) has been rightfully received by Subcontractor from a third party who is authorized to make such disclosure.

B. Nonuse and Nondisclosure. Subcontractor will not, during or subsequent to the term of this Agreement, (i) use the Confidential Information for any purpose whatsoever other than the performance of the Services on behalf of the Company or (ii) disclose the Confidential Information to any third party. Subcontractor agrees that all Confidential Information will remain the sole property of the Company. Subcontractor also agrees to take all reasonable precautions to prevent any unauthorized disclosure of such Confidential Information, including, but not limited to, having each of Subcontractor's employees and contractors, if any, with access to any Confidential Information execute a nondisclosure agreement in the form of Appendix "B". Without the Company's prior written approval, Subcontractor will not directly or indirectly disclose to anyone the existence of this Agreement or the fact that Subcontractor has this arrangement with the Company.

C. Former Client Confidential Information. Subcontractor agrees that Subcontractor will not, during the term of this Agreement, improperly use or disclose any proprietary information or trade secrets of any former or current employer of Subcontractor or other person or entity with which Subcontractor has an agreement or duty to keep in confidence

information acquired by Subcontractor, if any. Subcontractor also agrees that Subcontractor will not bring onto the Company's premises any unpublished document or proprietary information belonging to any such employer, person or entity unless consented to in writing by such employer, person or entity.

D. Third Party Confidential Information. Subcontractor recognizes that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Subcontractor agrees that, during the term of this Agreement and thereafter, Subcontractor owes the Company and such third parties a duty to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out the Services for the Company consistent with the Company's agreement with such third party.

E. Return of Materials. Upon the termination of this Agreement, or upon Company's earlier request, Subcontractor will deliver to the Company all of the Company's property, including but not limited to all electronically stored information and passwords to access such property, or Confidential Information that Subcontractor may have in Subcontractor's possession or control.

## **OWNERSHIP**

A. Assignment. Subcontractor agrees that all copyrightable material, notes, records, drawings, designs, inventions, improvements, developments, discoveries and trade secrets conceived, discovered, developed or reduced to practice by Subcontractor, solely or in collaboration with others, during the term of this Agreement that relate in any manner to the business of the Company that Subcontractor may be directed to undertake, investigate or experiment with or that Subcontractor may become associated with in work, investigation or experimentation in the Company's line of business in performing the Services under this Agreement (collectively, "Inventions"), are the sole property of the Company. Subcontractor also agrees to assign (or cause to be assigned) and hereby assigns fully to the Company all Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating to all Inventions.

B. Further Assurances. Subcontractor agrees to assist Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating to all Inventions in any and all countries, including the disclosure to the Company of all pertinent information and data with respect to all Inventions, the execution of all applications, specifications, oaths, assignments and all other instruments that the Company may deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive right, title and interest in and to all Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating to all Inventions. Subcontractor also agrees that Subcontractor's obligation to execute or cause to be executed any such instrument or papers shall continue after the termination of this Agreement.

C. Pre-Existing Materials. Subject to Section 3.A, Subcontractor agrees that if, in the course of performing the Services, Subcontractor incorporates into any Invention

developed under this Agreement any pre-existing invention, improvement, development, concept, discovery or other proprietary information owned by Subcontractor or in which Subcontractor has an interest, (i) Subcontractor will inform Company, in writing before incorporating such invention, improvement, development, concept, discovery or other proprietary information into any Invention, and (ii) the Company is hereby granted a nonexclusive, royalty-free, perpetual, irrevocable, worldwide license to make, have made, modify, use and sell such item as part of or in connection with such Invention. Subcontractor will not incorporate any invention, improvement, development, concept, discovery or other proprietary information owned by any third party into any Invention without Company's prior written permission.

D. Attorney-in-Fact. Subcontractor agrees that, if the Company is unable because of Subcontractor's unavailability, dissolution, mental or physical incapacity, or for any other reason, to secure Subcontractor's signature for the purpose of applying for or pursuing any application for any United States or foreign patents or mask work or copyright registrations covering the Inventions assigned to the Company in Section 3.A, then Subcontractor hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Subcontractor's agent and attorney-in-fact, to act for and on Subcontractor's behalf to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations with the same legal force and effect as if executed by Subcontractor.

### **CONFLICTING OBLIGATIONS**

A. Conflicts: Subcontractor certifies that Subcontractor has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement or that would preclude Subcontractor from complying with the provisions of this Agreement. Subcontractor will not enter into any such conflicting agreement during the term of this Agreement. Subcontractor's violation of this Section will be considered a material breach.

B. Substantially Similar Designs: In view of Subcontractor's access to the Company (TSI or its clients) trade secrets and proprietary know-how, Subcontractor agrees that Subcontractor will not, without Company's prior written approval, design identical or substantially similar designs as those developed under this Agreement for any third party during the term of this Agreement and for a period of 24 months after the termination of this Agreement. Subcontractor acknowledges that the obligations in this Section are ancillary to Subcontractor's nondisclosure obligations under section on Confidentiality.

### **REPORTS**

Subcontractor also agrees that Subcontractor will, from time to time during the term of this Agreement or any extension thereof, keep the Company advised as to Subcontractor's progress in performing the Services under this Agreement. Subcontractor further agrees that Subcontractor will, as requested by the Company, prepare written reports with respect to such progress. The Company and Subcontractor agree that the time required to prepare such written reports will be considered time devoted to the performance of the Services.

## **TIME SHEETS**

Subcontractor's Employee, if applicable, shall maintain timesheets on a weekly basis. At the end of each time period a TSI representative or TSI's customer shall verify the hours of the timesheet and confirm the accuracy thereof by signing the same. A copy of said timesheet shall be delivered to TSI. The information from the timesheet shall be utilized by "Subcontractor" to prepare an invoice to TSI. Invoices shall be paid in accordance with the preceding paragraph titled Payment Terms/Invoicing, above.

## **SEVERABILITY**

If any word, phrase, clause, sentence, provision or paragraph of this Agreement is or shall be held invalid or unlawful for any reason, the same shall be deemed severed from the remainder hereof, and stricken therefrom, and shall in no way affect or impair the validity of this Agreement or any other portion thereof, and this Agreement shall otherwise remain in full force and effect.

## **ENFORCEMENT OF AGREEMENT**

The failure of either party at any time to enforce any provision of this agreement or to require performance by the other party shall not constitute a waiver of such provision or affect either the validity of this agreement or either party's subsequent right to enforce it.

## **APPLICABLE LAW**

This Agreement shall be deemed a contract made under the laws of the State of New York, and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of such state.

## **ATTORNEY'S FEES**

In the event that there is commenced litigation relating to the term and conditions of the Agreement or the subject matter hereof, the prevailing party in such litigation shall be awarded reasonable attorney's fees and court costs in relation to such litigation.

## **TAXES/INSURANCE/LICENSES/OTHER**

"Subcontractor" shall be responsible for all required Federal and State payroll and business taxes including but not limited to workers compensation, personnel and business insurance, business and operations licenses and any other associated employer and employee costs and hold TSI harmless. Subcontractor" may be required to provide proof of required insurance on all personnel provided under this agreement.

"Subcontractor" warrants completely that it is the "Subcontractor's" sole responsibility to ensure that that all personnel provided under this agreement to TSI are employees of

“Subcontractor” and are legally entitled to work within USA. It is the “Subcontractor’s” responsibility to make sure this legality is maintained throughout the agreement term. If for any reason “Subcontractor” does not pay or delays payment to its employee/consultant on this agreement it is understood that TSI may at its discretion hire the person(s) directly to ensure client satisfaction with no recourse whatsoever. “Subcontractor” agrees to ensure the personnel it is providing under this agreement have gone through a background check are considered in good standing. “Subcontractor” agrees to maintain corporate insurance including workers compensation and shall name Top Source International, Inc. as an additional insured as of the first start date of each work order. Should any kind of status change regarding the personnel provided under this agreement, “Subcontractor” agrees to immediately provide such information in writing to TSI.

**ACCESS TO BOOKS AND RECORDS:** Pursuant to Section 1395x(v)(1)(I) of Title 42 of the United States Code and applicable rules and regulations thereunder, until the expiration of four (4) years after the termination of this Agreement, Agency shall make available, upon appropriate written request by the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States General Accounting Office, or the applicable state agencies or departments, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by Agency under this Agreement.

“Subcontractor” agrees to furnish any proof within 5 business days, if required, regarding taxes or legal status of the person(s) provided per the agreement between “Subcontractor” and TSI. “Subcontractor” agrees to accept any and all flow down provisions of the contract between TSI and its client and its terms and conditions.

### **INDEPENDENT CONTRACTOR**

Nothing herein shall be construed to create a relationship between the parties in the nature of a profit sharing, partnership, joint venture, principal/agent, employment, or any other relationship which might impose liability on any party hereto for its past, present, or future debts, liabilities, obligations, acts, or omissions.

### **LIABILITY**

“Subcontractor” shall defend, indemnify, and hold harmless TSI, its affiliates, its officers and its employees from and against all claims for damages including but not limited to personal injury, including death to any employee of “Subcontractor”, or any other person, or injury to property that may arise or may be alleged to arise, in any manner, from the carrying out of this agreement, whether by the “Subcontractor” or any subcontractor of “Subcontractor” or by anyone directly employed by either “Subcontractor” or the said subcontractor.



## OTHER REQUIREMENTS

All work and/or services provided through this agreement by “Subcontractor” must conform to all terms described in the Top Source International Subcontract, including all attachments thereto-dated \_\_\_\_\_, a copy of which is made a part of this agreement.

\_\_\_\_\_  
(Subcontractor)

**Top Source International**  
(Company)

\_\_\_\_\_  
Signed / Date

\_\_\_\_\_  
Signed / Date

Print Name/Title:

\_\_\_\_\_/\_\_\_\_\_

Print Name/Title:

or

Address:

\_\_\_\_\_  
\_\_\_\_\_

Address:

## APPENDIX "A"

### PURCHASE ORDER / STATEMENT OF WORK (SOW):

Top Source International, Inc. and Subcontractor, identified below on behalf of itself and its personnel, entered into an agreement dated \_\_\_\_\_ which is incorporated herein in full. Pursuant thereto-Top Source International has located a client for whom Vendor has agreed to perform services. Top Source International and Subcontractor agree to the following:

1. Subcontractor is a duly organized and validly existing corporation more specifically identified as: \_\_\_\_\_
  - A. State of Incorporation: \_\_\_\_\_
  - B. Federal Tax I.D. Number: \_\_\_\_\_
  - C. Business Address: \_\_\_\_\_
  - D. The following work shall be performed and following personnel of Subcontractor shall be the only personnel performing service for Client:

#### SOW Details:

\_\_\_\_\_  
\_\_\_\_\_

Name(s): \_\_\_\_\_

Rate: \$\_\_\_\_\_ [\_\_\_\_\_] hourly - all inclusive.

End Client / Location: \_\_\_\_\_

Estimated Start Date: \_\_\_\_\_

Estimated Duration - \_\_\_\_\_ (renewals  
based on project needs and/or performance)

\*All flow down terms and provisions of client and its affiliates are agreed to by Subcontractor. Subcontractor acknowledges receipt of such details.

Executed this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
(Sub-contractor)\*

Top Source International, Inc.

\_\_\_\_\_  
Signed / Date

\_\_\_\_\_  
Signed / Date

Print Name/Title:

\_\_\_\_\_/\_\_\_\_\_

Print Name/Title:

\_\_\_\_\_/\_\_\_\_\_