

Subcontractor Agreement

This is a Subcontractor Agreement ("Agreement") dated as of _____, 20____ between _____, a [*California nonprofit corporation*] ("Client"), and _____, a [_____] ("Subcontractor").

Background

A. Client is a nonprofit organization whose mission is [*insert mission*]. Subcontractor is an independent individual or entity. It is engaged in the business of providing services to third parties of the nature described in the Statement of Work ("SOW") attached as **Exhibit A**.

B. Client is party to an agreement ("Master Agreement") with a client ("Primary Client") specified in the SOW. Under the Master Agreement, Primary Client has retained Client to provide certain services to Primary Client.

C. The Master Agreement permits Client to subcontract a portion of the services. Client wishes to retain Subcontractor for services on the basis set out in this Agreement.

1. Services and Fees

1.1 Services

Subcontractor will provide to Client the services ("Services") described in the SOW.

1.2 Fees

The fees specified in the SOW will be Subcontractor's sole compensation for the Services. Subcontractor is responsible for Subcontractor's own expenses unless otherwise specified in the SOW. Subcontractor will submit invoices as specified in the SOW. Subcontractor will, in each invoice, include sufficient information to support the invoiced work, and will provide any other such data Client may request. Unless otherwise provided in the SOW, Client will pay invoices within thirty days of receipt.

1.3 Subcontractor Control

Subcontractor will do the work necessary to carry out and complete the Services in a timely manner consistent with applicable law, professional standards, the Master Agreement, and this Agreement. Subcontractor will have sole discretion over, and sole responsibility for, the planning, method, means, sequencing, time, and place of the work. Subcontractor will provide Subcontractor's own equipment and materials. Subcontractor may not subcontract any part of the Services.

1.4 Compliance with Master Agreement

Subcontractor will comply with all provisions of the Master Agreement relevant to the SOW and related activities, including funds use, reporting, licensing, and attribution requirements. To the extent that they apply to the Services to be performed by Subcontractor, the relevant provisions of the Master Agreement are incorporated into this Agreement with the same force and effect as though set forth in full. Subcontractor will be bound to Client to the same extent that Client is bound to the Primary Client under the Master Agreement. If there are any inconsistencies between the Master Agreement and this Agreement or the SOW, the Master Agreement will control.

1.5 Changes in Services

If either Client or Subcontractor believes an SOW should be adjusted in any respect, it will advise the other of the proposed changes. Client and Subcontractor will discuss the proposed adjustment and, if they agree on an adjustment, confirm and document the adjustment in a written change order ("Change Order") substantially in the form

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attached as **Exhibit B**. Client will not be responsible for additional fees beyond that set out in an SOW except as provided in a signed Change Order relating to that SOW.

1.6 Primary Client Changes in Services

Subcontractor understands that Primary Client may request changes in the services to be performed by Client under the Master Agreement. Client will promptly notify Subcontractor of any such changes that would affect the Services under this Agreement. Subcontractor will cooperate with Client to incorporate such changes, which may be implemented by executing a Change Order in accordance with Section 1.4 or an amendment to this Agreement in accordance with Section 6.2.

2. Work Product, Confidentiality, Property, and Conduct

2.1 Reports

Subcontractor will cooperate with Client in providing progress reports and other information to Primary Client as required by the Master Agreement or as Client may reasonably request. Subcontractor acknowledges that Client is relying on information provided by Subcontractor for purposes of complying with the Master Agreement and for other matters relating to the SOW.

2.2 Ownership of Work Product

Subcontractor and Client intend that Client will have full and exclusive rights to all work product created by Subcontractor or provided to Client under this Agreement (collectively, "Work Product"). Accordingly, Subcontractor: (a) assigns to Client all rights, title, and interest worldwide in the Work Product; (b) grants to Client an irrevocable, exclusive, royalty-free, perpetual, and worldwide license to any rights in the Work Product that cannot be assigned to Client; and (c) waives enforcement against Client of any rights in the Work Product that cannot be assigned or licensed to Client. Subcontractor will assist Client in obtaining and enforcing these rights in the Work Product. Subcontractor understands that Client may provide, share, incorporate, or license Work Product to Primary Client in accordance with the Master Agreement or otherwise.

2.3 No Infringement

Subcontractor warrants to Client that all Work Product will not violate, infringe, or misappropriate any copyright, right of privacy, right of publicity, trademark, trade name, trade secret, or other common law or statutory intellectual property or other right of any nature of any third party.

2.4 Third Party Proprietary Information

In carrying out Services, Subcontractor will not use or disclose information, trade secrets, or property of any former employer or other third party in violation of any agreements with that former employer or third party, or otherwise in violation of applicable law.

2.5 Confidentiality

Subcontractor will use Confidential Information (as defined below) only in connection with Subcontractor's activities under this Agreement and keep it confidential, using at least the same degree of care Subcontractor uses to prevent the unauthorized use or disclosure of its own confidential information. "Confidential Information" means all information, in any form, furnished to or obtained by Subcontractor from Client including, without limitation, Primary Client's proprietary information, employee and client data, budget and other financial data, product plans and strategies, technical data and research, and know-how. It does not include information which: (a) is or becomes generally available to the public other than as a result of a disclosure by Client; (b) was known by Subcontractor prior to its being furnished by Client; (c) is or becomes available to Subcontractor on a non-confidential basis from a source other than Client; or (d) is independently developed by Subcontractor.

2.6 Recordkeeping

Subcontractor will maintain records relating to the Services in a manner such that Client can evaluate compliance with this Agreement, and will make those records available for review by Client on reasonable notice during the term of this Agreement and for a period of three (3) years after its termination.

2.7 Publicity

Subcontractor will not use any of Client's or Primary Client's trademarks or identify Client or Primary Client as a client in any promotional, advertising, or other material, or in any website, press release, or public communication, without the prior written consent of Client or Primary Client.

2.8 Access to Property

Client may, in limited circumstances, make Client's facilities available to Subcontractor as reasonably necessary for performing the Services and, unless otherwise agreed given the nature of the Services, in accordance with Client's access, hours of operation, and security policies. Client may provide Subcontractor with access to Client or Primary Client's software, methodologies, protocols, designs, documents, and other materials. Client and Primary Client, as applicable, will retain sole ownership of all such materials and any records, equipment, and other physical or intellectual property that Client makes available to Subcontractor.

2.9 Harassment and Discrimination

In carrying out Services, Subcontractor will not harass, discriminate, retaliate, or be abusive toward any Client employee or other person at Client including, without limitation, engaging in any verbal, physical, written, or visual harassment, discrimination, or retaliation on the basis of race, religious creed, color, national origin, disability, sex, gender identity, gender expression, age, sexual orientation, or other characteristic protected by the law.

3. Subcontractor Relationship and Taxes

3.1 No Contract with Primary Client

Nothing contained in this Agreement or otherwise creates a contractual relationship between Primary Client and Subcontractor.

3.2 Independent Contractor

Subcontractor is and will be an independent contractor. Nothing in this Agreement creates an employment, partnership, joint venture, fiduciary, or similar relationship between Subcontractor and Client for any purpose. Neither Client nor Subcontractor has the power or authority to bind or obligate the other to a third party or commitment in any manner. This Agreement is not an exclusive arrangement. Subcontractor and Client are free to do business with others.

3.3 No Entitlement to Employee Benefits

Subcontractor will not be entitled to or eligible for any benefits that Client makes available to Client's employees, including, without limitation, coverage under any Client medical, dental, liability, automobile, or other insurance policies. Subcontractor waives any rights or claims to those benefits.

3.4 Taxes and Contributions

Subcontractor will have sole responsibility for all tax returns and payments required by any federal, state, or local tax authority, and for paying all disability, unemployment insurance, workers' compensation contributions, and any other contributions and expenses that may be required in connection with Subcontractor's performance of the Services and receipt of fees under this Agreement. Subcontractor understands that Client will not withhold income, social security, or Medicare taxes, make unemployment or disability insurance contributions, or obtain workers' compensation or other insurance on Subcontractor's behalf.

4. Insurance, Indemnification, and Remedies

4.1 Subcontractor Insurance

If requested by Client, Subcontractor will obtain insurance and proof of insurance as described in the applicable SOW.

4.2 Indemnification by Subcontractor

Subcontractor will defend, indemnify and hold Client, and its directors, officers, employees, agents, and assigns (collectively, "Client Parties"), harmless against all claims, liabilities, losses, damages, and expenses any Client Party may suffer and which arise directly or indirectly from: (a) Subcontractor's performance of the Services under or breach of this Agreement, (b) actions by Subcontractor that cause Client to be in breach of the Master Agreement, (c) any claims by employees, clients, subcontractors, suppliers, creditors, or other persons in a relationship with Subcontractor, (d) any claims of infringement, misappropriation, or otherwise by third parties regarding Work Product, or (e) any claims related to tax, insurance contributions, worker' compensation law, or other laws applicable to Subcontractor. Subcontractor will have no obligation to indemnify any Client Party to the extent the liability is solely caused by such Client Party's gross negligence or willful misconduct.

4.3 Injunctive Relief

Subcontractor acknowledges and agrees that: (a) any breach by Subcontractor of its obligations under Sections 2.2 or 2.5 will result in irreparable harm to Client which cannot be reasonably or adequately compensated in damages; (b) Client will be entitled to injunctive or other equitable relief in respect of such breach or imminent breach; and (c) Client will have all other rights and remedies to which it is entitled, at law or in equity, with respect to breach of Sections 2.2 or 2.5, and otherwise with respect to the enforcement of all rights relating to the establishment, maintenance, or protection of Client's intellectual property and Confidential Information.

5. Termination

5.1 Termination of Master Agreement

If at any time the Master Agreement is terminated, this Agreement will automatically terminate.

5.2 Termination upon Notice

Client may terminate this Agreement at any time by giving written notice of termination to Subcontractor. Such a termination will be effective thirty days after delivery of such notice.

5.3 Termination for Breach

If either Subcontractor or Client materially breaches any of its obligations under this Agreement, the non-breaching party may provide the breaching party with written notice of the material breach. If the breaching party fails to cure the material breach within fifteen days after receipt of such notice, the non-breaching party may terminate this Agreement effective immediately upon delivery to the breaching party of a written notice to that effect. The non-breaching party may in its reasonable discretion determine whether the breach has been cured.

5.4 Consequences of Termination

If this Agreement is terminated, then Subcontractor will be entitled only to compensation for Services performed through the effective date of termination, less the amount of any claims by Client arising out of such termination, including, without limitation, claims for damages and transition costs. Client will not be liable for any further payment. Subcontractor will also return any advances or other amounts previously paid by Client, if any, not attributable to Services performed prior to the effective date of termination. Client will pay undisputed fees within thirty days after the later of receiving Subcontractor's invoice or the effective date of termination.

5.5 Return of Materials; Survival

Upon termination of this Agreement, Subcontractor will, at Client's request, promptly return all documents, materials, records, and equipment that Client may have provided to Subcontractor. Client will retain sole ownership of these items and other property which Client may have made available to Subcontractor. The provisions of Sections 2.1 – 2.7, 3.3, 3.4, 4.2, 4.3, 5.5, and 6 will remain effective after termination.

6. General Provisions

6.1 Entire Agreement

This Agreement, together with the SOW and any other exhibits, expresses the final, complete, and exclusive agreement between Subcontractor and Client, and supersedes any and all prior or contemporaneous written and oral agreements, arrangements, negotiations, communications, course of dealing, or understanding between Subcontractor and Client relating to its subject matter. If there are any inconsistencies between the SOW and this Agreement, this Agreement will control.

6.2 Amendment

This Agreement may be amended only as stated in and by a writing signed by both Subcontractor and Client which recites that it is an amendment to this Agreement.

6.3 Severability

If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

6.4 Waiver

Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

6.5 Assignment

Subcontractor may not assign its rights or delegate its duties under this Agreement to anyone else without the prior written consent of Client.

6.6 No Third Party Beneficiaries

Except as provided in Section 4.2, this Agreement is for the exclusive benefit of Subcontractor and Client and not for the benefit of any third party, including, without limitation, any client, employee, affiliate, subcontractor, or vendor of Subcontractor or Client .

6.7 Notices

Notices and consents under this Agreement must be in writing and delivered by mail, hand delivery, fax, or e-mail to the contact persons set out in the SOW. These addresses may be changed by written notice to the other party.

6.8 Governing Law

This Agreement will be governed by California law.

6.9 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.

* * * * *

This Agreement was signed by Client and Subcontractor as of the date stated in its first paragraph:

[insert legal name of Client]

[insert legal name of Subcontractor]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

Exhibit A

Statement of Work

Subcontractor data and contact person

Name	
Address	
Telephone	
Website	
Contact person	Name: Title: E-mail: Telephone:
Key project staff contact information (if different)	
EIN (if applicable)	

Client project leader

Client address	
Principal contact person	Name: Title: E-mail: Telephone:

Master Agreement

Name of Primary Client	
Name of agreement	
Date of agreement	

Services

Project start date	
Project completion date	
Project budget (if applicable)	
Description of Services	

Fees

Fees	
Invoicing	

Subcontractor insurance (if applicable)

Subcontractor insurance requirements	<i>[state insurance requirements]</i>
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Other terms (if applicable)

Other terms	<i>[state other terms]</i>
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Defend Trade Secrets Act Notice: An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal; and does not disclose the trade secret, except pursuant to court order.

Exhibit B
Form of Change Order

Change Order date	
Reason for change in Services	
Modified Services (if applicable)	
Modified timeframe (if applicable)	
Modified fee terms (if applicable)	

This document is a Change Order contemplated by the Subcontractor Agreement, dated _____, 20__, between [name of Client] and [name of Subcontractor].

Agreed and confirmed as of the date stated above in this Change Order:

[insert legal name of Client]

[insert legal name of Subcontractor]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit C

Master Agreement (copy attached)