

## SUBVENDOR SERVICES AGREEMENT

This Subvendor Services Agreement (the "Agreement"), effective the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_, is entered into by and between Adecco North America, LLC, a limited liability company, with its principal place of business at 175 Broad Hollow Road, Melville, NY 11747 ("Adecco"), and \_\_\_\_\_, a \_\_\_\_\_ corporation, with offices at \_\_\_\_\_ ("Subvendor").

WHEREAS Adecco and \_\_\_\_\_ ("Client") have entered into an agreement pursuant to which Adecco has agreed to provide temporary employment services to Client; and

WHEREAS, in connection with Adecco's performance of its obligations to Client, Adecco wishes to have Subvendor supply temporary employees directly to Client, and Subvendor wishes to provide such temporary employees to Client;

NOW, THEREFORE, Subvendor and Adecco, in consideration of the mutual promises contained herein and other good and valuable consideration given and received, agree as follows:

### 1. TEMPORARY EMPLOYEE SERVICES

- 1.1 At Adecco's request from time to time, Subvendor agrees to use its best efforts to supply temporary employees for work to be performed for Client. The temporary employees assigned by Subvendor to Client ("Assigned Employee") hereunder shall have the skills, experience, qualifications and capabilities as specified in the request. Adecco may place orders with other suppliers and is not obligated to place any orders or any particular volume of orders for temporary employees with Subvendor under this Agreement.
- 1.2 Adecco shall designate its authorized representative(s) who shall place requests for Assigned Employees by communicating orally or in writing to Subvendor. When Subvendor receives such a request, Subvendor will contact Adecco's representative within twenty (20) minutes from the time of such order informing Adecco whether it can service the order.
- 1.3 Assigned Employees will report to the Client location and supervisor specified on each order at the prescribed time indicated. Client will supervise the Assigned Employees in performing the agreed upon duties.
- 1.4 Adecco may cancel without charge any request or order for services at any time prior to Subvendor's Assigned Employee beginning the assignment at Client.
- 1.5 At the request of Client or Adecco, Subvendor will remove any of its employees assigned to Client. This obligation shall not in any way affect the right of Subvendor, in its sole discretion as employer, to hire, assign, reassign, discipline and/or terminate its own employees.

## 2. PRICING, INVOICING, AND PAYMENT TERMS

- 2.1 Adecco will pay Subvendor for temporary services rendered by Subvendor's Assigned Employees, as approved and accepted by Client, at the pricing and in accordance with the procedures as set forth in Attachment A or at such pricing as is agreed upon in writing when the request is made.
- 2.2 Adecco shall be relieved from the payment of any invoice received greater than sixty (60) days after the performance of the Services. Subvendor's failure to timely invoice as set forth herein shall constitute a waiver of any and all rights Subvendor may have to compensation hereunder or at law for such services, charges, or fees.
- 2.3 Adecco's obligation to pay Subvendor is expressly conditioned upon Adecco's receiving payment from Client for Services rendered to, for or on behalf of Client. It is agreed that **Subvendor relies solely and exclusively on the credit of Client, not Adecco, for payment for its Services.** Notwithstanding any contrary payment terms listed on Subvendor's Invoice or otherwise provided for in this Agreement, Subvendor agrees that in the event of Client's delay, failure, refusal or inability to pay Adecco for the Services provided by Subvendor, Adecco shall have no obligation to pay for any invoice covering such services. It is further agreed that if such invoice is paid by Adecco, Adecco shall be entitled to recover the full amount of such payment from Subvendor, or to deduct such amount by offset from any payments then or thereafter due to Subvendor.
- 2.4 Subvendor shall report and pay the employer's share applicable state and local taxes, federal taxes, workers' compensation, FICA, federal unemployment insurance, and the like, with respect to all compensation received by Subvendor's Assigned Employees. Subvendor agrees to indemnify and hold harmless Client and Adecco against any liability for premiums, contributions or taxes payable under any workers' compensation, unemployment compensation, disability benefits, old age benefit or tax withholding laws with respect to any of Subvendor's Assigned Employees.
- 2.5 Subvendor shall pay, and pass through (without any markup) to Adecco and Client, where applicable, any required federal, state, or local sales, use, excise, value added, or other like tax on the services provided to Client by Subvendor under this Agreement.
- 2.6 Client may offer employment to any employee assigned by Subvendor. If such person commences employment with Client ninety (90) days after being assigned to Client, then neither Adecco nor Client will be obligated to pay Subvendor any hiring, settlement, or other fees in connection with this Agreement. The ninety (90) day period begins on the first day the Assigned Employee performs services for the Client. In the event that Client employs an individual assigned by Subvendor prior to the expiration of the ninety-day period, the conversion fee schedule set forth in Attachment A shall apply.

## 3. RESPONSIBILITIES OF SUBVENDOR

- 3.1 **General Duties:** Subvendor will recruit, interview, select, hire and assign employees who, in Subvendor's judgment, are best qualified to perform the services requested by Client. As the employer, Subvendor will: (i) maintain all necessary personnel and payroll records for its employees; (ii) calculate their wages and withhold taxes and other government mandated charges, if any; (iii) remit such taxes and charges to the

appropriate government entity; (iv) pay net wages and fringe benefits, if any, (e.g., vacation and holiday pay) directly to its employees; (v) provide for liability and fidelity insurance as specified in this Agreement, and (vi) provide workers' compensation insurance coverage in amounts as required by law.

- 3.2 Guarantees: Subvendor guarantees that each of its Assigned Employees will satisfactorily perform the services required by the assignment. If any Assigned Employee of Subvendor fails to meet Client's or Adecco's requirements for the services to be provided or such services are not performed to the satisfaction of Client and Adecco, the provisions in Section 2.2 of Attachment A shall apply.
- 3.3 Use of Name or Logo: Subvendor will specify in all recruiting materials and activities that employees will be employees of Subvendor. Subvendor will not use Adecco's or Client's name or logo in any recruiting, advertising or marketing activities or materials, without the prior written approval of either Adecco or Client, as the case may be, in each specific instance.

#### 4. TERM AND TERMINATION

- 4.1 This Agreement shall continue indefinitely until canceled by either of the parties hereto upon thirty (30) days written notice to the other. In addition, Adecco shall have the right to immediately cancel this Agreement in whole upon written notice to Subvendor in the event Adecco, in its sole discretion, determines Subvendor's performance to be unsatisfactory or in the event of any breach of the obligations of this Agreement by Subvendor, or in the event Subvendor fails to submit proper invoices in a timely manner.
- 4.2 In the event of termination of this Agreement, (a) each Subvendor Assigned Employee will continue the assignment through the period of time referenced on the current work order unless it is determined there is a failure to perform the job function required, or the assignment has terminated for other reasons, and (b) Subvendor will not remove its Assigned Employees from assignment at Client prior to completion of assignment for reasons other than Adecco's failure to pay in a timely manner for the services provided.
- 4.3 In the event that this Agreement or Adecco's agreement with Client is terminated, Subvendor agrees to assist in the orderly and expeditious transition of its temporary workers to another vendor upon request by Adecco or Client within thirty (30) days following written notice to Subvendor.

#### 5. RELATIONSHIP OF PARTIES

- 5.1 At all times during the term of this Agreement, Subvendor shall retain its independent status, and Subvendor and its employees are and shall at all times be independent contractors to Client and Adecco. The employees assigned to Client under this Agreement shall remain employees of Subvendor and shall not by reason of their assignment to Client become employees of Client or Adecco.
- 5.2 Regardless of the nature or duration of any assignment with Client, neither Subvendor nor any of Subvendor's Assigned Employees will be eligible for or entitled to participate in any of Client's employee benefit plans, programs, policies or practices which may now or in the future be in effect, including, without limitation, any pension, retirement, or 401(k) plan; any profit sharing, stock option, bonus or incentive compensation plan; any

life or health insurance plan; any vacation or holiday pay plan; or any separation payment plan.

## 6. INSURANCE

Subvendor will procure and maintain insurance during the entire term of this Agreement, and upon request shall provide Client and Adecco with certificates of such insurance, covering the following risks:

- i) Commercial General Liability - \$1,000,000
- ii) Automobile Liability - \$1,000,000
- iii) Workers' Compensation - Statutory Limits
- iv) Employer's Liability - \$1,000,000
- v) Commercial Blanket Bond - \$1,000,000
- vi) Depositors Forgery - \$100,000
- vii) Umbrella Liability - \$5,000,000

Adecco, Client, each of their respective affiliated entities, and each of their respective officers, employees, representatives and agents shall be named as additional insureds on the required commercial general liability, automobile liability and umbrella liability coverage.

## 7. INDEMNIFICATION

7.1 Subvendor shall indemnify, defend, and hold harmless Adecco and Client, their affiliates, officers, directors, employees, agents, and other representatives from and against any and all claims, demands, losses, liabilities, damages, expenses (including reasonable attorney fees) and causes of action (hereinafter "Claims") for (i) injury to, or death of, any person, including without limitation the employees, agents, contractors, licensees, and invitees of Subvendor, (ii) damage to, or destruction of, any property, whether owned by Client or Adecco or otherwise, or (iii) the failure of Subvendor to comply with the provisions of this Agreement, but in each case, only to the extent such Claims are caused by or the result of the negligent or intentional acts or omissions of Subvendor, its officers, employees, agents, contractors, licensees or invitees in the performance of the services defined in this Agreement.

7.2 Adecco or Client shall promptly notify the other party of the assertion of any claim covered by this Agreement so as that Subvendor has a reasonable time within which to notify its insurers of such claim and shall tender of the defense the claim. Failure to so notify shall not relieve Subvendor of its obligations hereunder except to the extent such failure actually and materially caused prejudice.

## 8. AUDIT RIGHTS

For a period of at least three years following the date particular Services are provided by Subvendor to Client under this Agreement, or for such longer period as may be required by applicable law, Subvendor agrees to maintain accounting records necessary to verify the basis for all charges billed to Client hereunder. Client and Adecco will have the right to audit such records during normal business hours upon at least seven (7) days' prior written notice to Subvendor. Each party will bear its own costs and expenses in connection with such audit.

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In addition, Adecco shall have the right to review Subvendor's billing and other procedures relating to this Agreement, as well as the benefits provided by Subvendor to its employees.

9. NOTICES

Any notice required or permitted to be delivered by one party to another under or in connection with this Agreement shall be deemed sufficiently given after three business days if sent by certified U.S. mail, return receipt requested, or after one business day if sent by nationally recognized overnight carrier to the attention of the individual(s) and at the address (es) indicated below:

If to Adecco, to:

Adecco North America LLC

\_\_\_\_\_

\_\_\_\_\_

Attention: Branch Manager

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

With a copy to:

Adecco North America, LLC

175 Broad Hollow Road

Melville, NY 11747

Attention: General Counsel

Telephone #: (631) 844-7800

Fax #: (631) 844-7266

If to Subvendor, to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

With a copy to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

10. LIMITATION ON LIABILITY FOR ANY MATTER IN CONNECTION WITH AGREEMENT

IN NO EVENT SHALL ADECCO BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES OR EXPENSES OR LOST PROFITS (REGARDLESS OF HOW CHARACTERIZED AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY ORDER UNDER THIS AGREEMENT, REGARDLESS OF THE

FORM OF ACTION (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTORY LIABILITY OR OTHERWISE).

11. MISCELLANEOUS

- 11.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns. This Agreement shall not be assigned in whole or in part by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may without the consent of the other party assign this Agreement, or delegate the performance of all or part of its obligations and duties hereunder, to an Affiliate (provided the party guaranty the Affiliate's performance) or to any successor to all or substantially all of its interest in the business to which this Agreement relates. As used herein, "Affiliate" of a party shall mean any corporation or other business entity controlled by, controlling or under common control with, such party.
- 11.2 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, notwithstanding choice of law principles.
- 11.3 Compliance with Laws. In the performance of this Agreement, each party agrees to comply with all applicable laws, rules, and regulations.
- 11.4 Severability. In the event that any provision of this Agreement or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect. The parties further agree to replace such illegal, void or unenforceable provision of this Agreement with a legal, valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such illegal, void or unenforceable provision.
- 11.5 Waiver. The failure of either party to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed to be a waiver of such provisions or of its right thereafter to enforce each and every provision.
- 11.6 Force Majeure. Neither party to this Agreement shall be liable for its failure to perform hereunder due to circumstances beyond its reasonable control, including but not limited to strike, riot, war, fire, act of God, accident, plant breakdown not caused by the fault or neglect of such party, compliance with any law, regulation or order, whether valid or invalid, of the United States of America or any other governmental body.
- 11.7 Survival. Any respective obligations of Adecco or Subvendor hereunder which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive such termination, cancellation or expiration.
- 11.8 Complete Understanding; Modification. This Agreement, together with all attachments, exhibits and addenda attached hereto, constitute the full and complete understanding and agreement of the parties relating to the subject matter hereof and supersede all prior or contemporaneous understandings and agreements relating to such subject matter. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the parties hereto.

11.9 Headings. Section headings are included for convenience only and are not to be used to construe or interpret this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below, to be effective as of the date first set forth above.

ADECCO NORTH AMERICA, LLC

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

***THIS ATTACHMENT MUST BE CUSTOMIZED TO REFLECT TERMS IN MASTER AGREEMENT***

**ATTACHMENT A**

1. PRICING, INVOICING, AND PAYMENT TERMS

Subvendor shall upon its review, approve time records submitted by Assigned Employees and shall retain copies of such time records for a period of 3 years.

2. SUBVENDOR'S DUTIES

2.1 Coordination and Cooperation with Procedures Established by Adecco. In addition to the specific processes and procedures specified in this Agreement, Subvendor shall be obligated to comply with all reasonable procedures established by Adecco or Client in connection with the services to be provided under this Agreement.

2.2 Guarantee \_\_\_\_\_

2.3 Intellectual Property: At Client's or Adecco's request, Subvendor will cause each of its employees assigned to Client to sign and deliver a copyright and patent agreement in a form acceptable to Client, prior to, or as soon as possible after, the assignment of such employee to Client.

2.4 Confidentiality: Subvendor will insure that it and its employees assigned to Client will not use or disclose any information learned during the performance of this Agreement relating to the business of Client which Client might reasonably consider confidential (including without limitation all proprietary information and trade secrets) for any purpose other than performing the services under this Agreement. At Client's or Adecco's request, Subvendor will cause each of its employees assigned to Client to sign and deliver a nondisclosure/confidentiality agreement in a form acceptable to Client, prior to, or as soon as possible after, the assignment of such employee to Client.

2.5 Compliance with Client's Requirements: Subvendor agrees to comply with all the current and future service requirements specified by Client as supplied to Subvendor from time to time in writing by Adecco. For example, this may include compliance with Client's requirements regarding metrics, and quality screening and tracking.

2.6 Client Contact: Except as otherwise requested or directed by Adecco, Subvendor will deal directly and exclusively with Adecco with respect to Subvendor's Assigned Employees and the services provided hereunder, and will not communicate with Client regarding such.

2.7 Orientation: Upon the request of Adecco, Subvendor will ensure that its Assigned Employees attend orientation meetings regarding policies, procedures and expectations of Client and Adecco relating to the services provided by Subvendor's Assigned Employees. Subvendor will require its Assigned Employees to sign all paperwork required by Client prior to beginning an assignment.



- 2.8 Reports and Information: As reasonably requested by Adecco, Subvendor will provide Adecco with status reports of orders hereunder. Subvendor will provide to Adecco such reports and information as Client or Adecco may require from time to time relating to Subvendor performance or other management matters under this Agreement. Upon the request of Adecco, Subvendor will reasonably cooperate with Adecco and Client in the measurement of Customer satisfaction and Subvendor performance hereunder.
- 2.9 Competitive Pay Rates: Adecco uses a pay rate review process in order to arrive at competitive pay rates for its clients. Accordingly, Subvendor will utilize pay rates for its employees assigned to Client hereunder that are reasonable and agreeable to Adecco and Client.
- 2.10 Employee Testing: At the request of Adecco or Client, Subvendor will arrange for drug testing and criminal background checks for the Subvendor Assigned Employees, the actual cost (without markup) of which shall be passed through to Adecco or Client. Based on the results of the criminal background check, Subvendor will not knowingly place on assignment with Client an employee with a felony conviction.
- 2.11 Compliance: Subvendor and all persons assigned by Subvendor shall comply with all applicable laws, regulations, orders, ordinances, codes and standards, including identification and procurement of required permits, certificates, approvals and inspections, insurance coverage (including workers' compensation), proper withholding and submission of social security and income taxes, and any other laws which subsequently become applicable to Subvendor or to Subvendor's employees or agents, in performance under this Agreement. The foregoing shall include, without limitation, compliance with the Fair Labor Standards Act, the Immigration Reform and Control Act, and all equal opportunity employment laws and regulations.