

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (this “**Agreement**”), effective as of [EFFECTIVE DATE] (the “**Effective Date**”), is made and entered

into by and between:

[CLIENT NAME], a company organized and existing in [State], with offices located at [CLIENT ADDRESS] (hereinafter the “**Client**”), and [CONTRACTOR NAME], an independent contractor with a registered address located at [CONTRACTOR ADDRESS] (hereinafter the “**Contractor**”).

WHEREAS:

1. The Client is in the business of [DESCRIPTION OF BUSINESS] and is in need of [DESCRIPTION OF NEED] and lacks needed experience or expertise to address this need, and
2. The Contractor has extensive expertise in [DESCRIPTION OF EXPERTISE], and
3. The Client wishes to engage the Contractor to provide consulting and/or professional services in [DESCRIPTION OF PROJECT], and the Contractor is willing to provide such consulting and/or professional services, solely upon the terms and conditions of this Agreement,

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants, agreements, and promises set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. SERVICES & ENGAGEMENT.

The Client hereby engages the Contractor to provide the consulting and/or professional services outlined in this Section 1 below (the “**Services**”).

1. *Base Services* -

- a. Scope of Work - The Contractor will provide [DESCRIPTION OF SERVICES].
- b. Duration - The Contractor will provide the Services for the period starting as of [START DATE] and ending as of [END DATE].
- c. Location - The Services will be performed at [LOCATION].
- d. Not Included - For clarity, the Services expressly do not include [EXCLUDED SERVICES].

2. *Additional Services* - Throughout the term of this Agreement, at times convenient to the

Contractor and the Client, and upon the Client's request, the Contractor may provide additional consulting and/or professional services on an hourly rate basis at a rate of [HOURLY RATE] U.S. Dollars per hour or, at the option of the Client, up to ten (10) hours per calendar month in exchange for a fixed monthly fee in the amount of [MONTHLY FEE] U.S. Dollars per calendar month. Under the latter option, no balance of hours from the previous month may be carried over to the next month, and each calendar month's hours will be capped at ten (10) hours.

2. CLIENT OBLIGATIONS.

- 1.
- 2.

3. TERM.

The term of this Agreement shall commence on the Effective Date and continue until [AGREEMENT END DATE], unless otherwise extended by mutual, written agreement of the parties or terminated as set forth herein.

4. COMPENSATION & PAYMENT.

As consideration for the services rendered under Section 1.a above, the Client shall pay the Contractor the fixed price amount of [FIXED PRICE AMOUNT] plus all reasonable substantiated costs associated with approved travel. Payment of the fixed price amount shall be in advance of any services being provided under this Agreement and shall be a condition precedent to any performance obligation of the Contractor hereunder. Upon completion of such services, the Contractor will deliver to the Client all copies of receipts for travel expenses, and the Client will reimburse the Contractor within thirty (30) days of the date of the Contractor's invoice, which shall include copies of receipts for backup. Reasonable travel expenses include, but are not limited to, mileage, airfare, Internet connections, taxis, auto rentals, meals and incidentals, and lodging.

If the Client opts to pay the Contractor on an hourly rate basis for the services described in Section 1.b, the Client shall pay the Contractor on a bi-weekly basis for actual hours expended

within ten (10) days of the date of any Contractor invoice. If the Client opts to pay the Contractor on a fixed fee basis for each calendar month in accordance with Section 1.b, the Client shall pay the Contractor the full fixed fee amount on the first of every calendar month. Such payment is a condition precedent to any performance obligation of Contractor under Section 1.b.

All payments hereunder shall be made in U.S. Dollars via wire transfer in accordance with instructions provided by the Contractor.

5. INDEPENDENT CONTRACTOR.

Contractor and the Client shall at all times be deemed to be independent contractors and nothing herein shall be construed to create or imply that there exists between the parties a partnership, joint venture or other combined business organization. Contractor shall hold no authority, express or implied, to commit, obligate, or make representations on behalf of the Client and shall make no representation to others to the contrary. Nothing herein is intended nor shall be construed for any purpose as creating the relation of employer and employee or agent and principal between the parties. Except as otherwise specified herein, Contractor retains the right to direct, control or supervise the details and means by which the Services are provided. Contractor shall not be eligible for, or participate in, any insurance, pension, workers' compensation insurance, profit sharing or other plans established for the benefit of the Client employees.

Contractor shall be responsible for payment of all taxes arising out of the Contractor's activities in connection with this Agreement, including without limitation, federal and state income taxes, social security taxes, unemployment insurance taxes, and any other taxes or business license fees as required. The Client shall not be responsible for withholding any income or employment taxes whatsoever on behalf of Contractor.

6. CONFIDENTIALITY.

Each party shall receive in confidence ("receiving party") from the other party ("disclosing party") and treat as confidential all technical information, business/financial information, management information, and documentation which (i) is stamped or otherwise marked as being confidential or proprietary, whether in written or electronic form, (ii) pertains in any way to such party's (or its

affiliates') business plans or methods, or (iii) otherwise is not generally known by others, and under the circumstances of the disclosure, the disclosing party had a reasonable expectation that the receiving party would know that the information is confidential or proprietary (collectively, "Proprietary Information"). Information that is disclosed orally or visually to a receiving party shall also be deemed Proprietary Information if the disclosing party identifies such information as proprietary at the time of disclosure and, within thirty (30) days after such disclosure reduces the subject matter of the disclosure to writing and submits it to the receiving party.

A receiving party shall hold Proprietary Information received from the disclosing party in confidence, shall use such information only for the purpose of and in accordance with this Agreement and shall not further disclose such information to any third party without the prior written approval of the original disclosing party. The obligation to protect the confidentiality of Proprietary Information shall extend for a period of five (5) years following a party's receipt of Proprietary Information.

The restrictions of this Section shall not apply to any information: (i) lawfully received from another source free of restriction and without breach of this Agreement, (ii) that is published or becomes generally available to the public without breach of this Agreement, (iii) known by the receiving party prior to the time of disclosure, (iv) independently developed by the receiving party without resort or access to the Proprietary Information; or (v) that the disclosing party has approved for further release by the receiving party.

Proprietary Information shall remain the property of the disclosing party and shall be returned or destroyed upon written request or upon termination or expiration of this Agreement. Receiving party may retain in the files of its legal counsel for archival purposes only, one copy of all written materials returned.

Both parties acknowledge that the Proprietary Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the Proprietary Information would destroy or diminish the value of such information. The damages to the

disclosing party that would result from the unauthorized dissemination of the Proprietary Information would be impossible to calculate. Therefore, both parties hereby agree that the disclosing party shall be entitled to injunctive relief preventing the dissemination of any Proprietary Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. The disclosing party shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Independent Contractor Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

7. INTELLECTUAL PROPERTY RIGHTS.

Nothing contained in this Independent Contractor Agreement shall be construed as granting to any party a license, express or implied, under any patent, copyright, trade secret, or other intellectual property right now or hereafter owned, obtained, or licensable by a Party to this Agreement. Any intellectual property made in the performance of this Agreement solely by the personnel of one Party shall be or remain the sole and exclusive property of that Party, regardless of whether it is completed or reduced to practice thereafter. In the event that employees of the Parties jointly produce copyrightable material, such material shall be jointly owned and copyrighted with rights reserved for both Parties and both Parties shall share in the cost, if such copyright is registered.

If during the performance of this Independent Contractor Agreement inventions result, the following shall apply: each invention, discovery, or improvement (hereinafter referred to as "Invention") conceived or first actually reduced to practice by one or more employees of one of the Parties, shall be the sole property of the Party whose employee or employees made the Invention. Any Inventions conceived or first actually reduced to practice jointly by employees of both Parties hereto shall be jointly owned by both Parties. Patent applications covering such joint Inventions shall be filed by attorneys mutually acceptable to both Parties and the cost therefore shall be equally shared. In the event one of the Parties does not desire to file a patent application covering a joint Invention in any particular country or to equally share in the expenses therefore, the other Party shall have the right, at its own expense, to file such

application and shall have control over the prosecution of such application and maintenance of any patent which may issue thereon, including the sole right to abandon such application or patent at any time.

The Client acknowledges that the Contractor possess knowledge and expertise relating to the subject matter of the Services ("Contractor Know-How"), which may include intellectual property rights in certain pre-existing tools and materials used by the Contractor in performing the Services or otherwise. Nothing in this Agreement is intended to transfer to the Client any rights in the Contractor Know-How, which shall remain the property of the Contractor.

8. REPRESENTATIONS & WARRANTIES.

Contractor represents and warrants that the Services will be performed in a professional and workmanlike manner and it has the authority and capacity to enter into this Agreement and is not subject to any restrictive covenant or other legal obligation that prohibits the Contractor from performing the Services.

EXCEPT FOR THE LIMITED WARRANTIES EXPRESSLY SET FORTH ELSEWHERE IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS," WITH ALL FAULTS, AND THE ENTIRE RISK AS TO THE SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT OF SUCH SERVICES SHALL BE WITH THE CLIENT. THE Contractor DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

9. TERMINATION.

This Agreement may be terminated by either party in the event the other party fails to perform its obligations hereunder on time, fails to assure timely performance, or otherwise fails to perform its material obligations; provided, however, that prior to such termination the terminating party notifies the defaulting party in writing at least ten (10) days in advance, states the reasons why the Agreement should be terminated and affords the defaulting party an opportunity to cure

any alleged default during such ten (10) day notice period.

Either party may terminate this Agreement, upon notice and without liability, in the event the other party: (a) files a petition in bankruptcy; (b) has filed against it an involuntary petition in bankruptcy not dismissed within thirty (30) days; (c) consents to the appointment of a receiver, custodian, trustee or liquidator; or (d) dissolves, liquidates or makes a general assignment for the benefit of creditors.

Either party may terminate this Agreement, or any Services to be performed hereunder, in whole or in part, without cause and for its own convenience, by providing the other written notice of termination at least thirty (30) days in advance, specifying the extent to which the Agreement is so terminated and the date upon which such termination becomes effective. The terminating party shall have no liability for such termination except that the Client shall be liable for Services rendered and/or expenses incurred by the Contractor in accordance with this Agreement prior to the effective date of such termination and for which payment has not been made.

10. LIABILITY AND INDEMNIFICATION.

Each Party shall indemnify and hold harmless the other Party and its affiliates, directors, officers, employees, partners, contractors or agents, from and against any and all claims, actions, causes of action, demands, or liabilities of whatsoever kind and nature, including judgments, interest, reasonable attorneys' fees, and all other costs, fees, expenses, and charges (collectively, "Claims") to the extent that such Claims arise out of or were caused by the negligence, gross negligence, or willful misconduct of the indemnifying Party or from any breach of the Agreement by the indemnifying Party.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN CONTRACT, TORT, OR BASED UPON A WARRANTY, EVEN IF THE OTHER PARTY OR ANY THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF Contractor TO THE CLIENT SHALL NOT EXCEED THE SUM OF THE FEES PAID TO THE Contractor BY

THE CLIENT HEREUNDER.

11. MISCELLANEOUS.

1. *Severability* — If any provision of this Agreement shall be held to be invalid or unenforceable, such provision shall be stricken and the remainder of the Agreement shall remain in full force and effect to accomplish the intent and purpose of the parties. The parties agree to negotiate the severed provision to bring the same within the applicable legal requirements to the extent possible.

2. *Governing Law* — This Agreement shall be subject to, and construed and interpreted in accordance with, the laws of the State of New York, without regard to its conflict-of-laws provisions and the U.N. Convention for the International Sale of Goods.

3. *Disputes* — Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by confidential arbitration in New York City, before the New York State Arbitration Alternative's arbitrator(s) (the "NYSAA"). The arbitration shall be administered by the NYSAA either online or in person pursuant to its NYSAA Commercial Arbitration Rules & Procedures accessible at www.nysaa.nyc. The NYSAA Rules and Code of Ethics are hereby incorporated in this Agreement by reference. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.

4. *No Waiver* — Any failure or delay by either party to exercise any right, power or privilege hereunder or to insist upon observance or performance by the other party of the provisions of this Agreement shall not operate or be construed as a waiver thereof. No waiver shall be binding on either party unless it is in writing and signed by an authorized representative of the party to be bound.

5. *Survival* — The obligations in this Agreement that by their terms naturally survive the expiration or termination of this Agreement shall so survive.

6. *Language of Contract* — This contract has been negotiated and concluded in English U.S. It may be translated into any other language for practical purposes, but the English U.S. version shall prevail in the event of any doubt.

7. *Anti-Assignment* — Neither party may assign, subcontract, or otherwise transfer its rights or obligations under this without the prior written consent of the other party, which shall not be unreasonably withheld.

8. *Integration/Modification* — This document and any exhibits or attachments hereto embody the entire agreement of the parties with respect to the subject matter hereof and supersede and cancel all previous negotiations, agreements or commitments by the parties whether oral or written. This Agreement may not be released, cancelled, abandoned, amended or modified in any manner except by an instrument in writing duly signed by each of the parties hereto.

In Witness Whereof, this Agreement is duly executed by the duly authorized representatives of the parties as set forth below.

[Independent Contractor]

[Name]

[Title]

[Client]

[Name]

[Title]