

SALES COMMISSION AGREEMENT

THIS SALES COMMISSION AGREEMENT (this “**Agreement**”) is made and entered into as of _____, and is between _____ (“**Contractor**”), and _____ (the “**Company**”). The parties hereto are sometimes referred to herein as a “**Party**” or the “**Parties.**”

RECITALS

Upon the terms and conditions set forth in this Agreement, the Company desires to retain the Contractor to perform services set forth herein, and Contractor desires to provide such services.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Engagement of Contractor; Term; Termination. The Company hereby engages the Contractor to perform the services as substantially described on Exhibit A hereto (the “**Services**”). It is acknowledged that throughout the Term, the Services may be modified, expanded, or reduced by the Company, based upon the needs of the Company, upon discussion and mutual agreement of the Parties. Contractor shall execute its duties hereunder professionally and in good faith and applying its reasonable best efforts at all times. This engagement shall commence on the Effective Date set forth on Exhibit A and shall be for the Term set forth on Exhibit A, and shall automatically renew for successive one-year periods unless terminated by either party, or unless earlier terminated as provided herein. The Company shall have the right to terminate this Agreement upon 30-days advance written notice to Contractor for any reason or no reason, and immediately based upon cause or default by the Contractor, or in the event Contractor becomes unwilling or unable to perform the Services by reason of illness, incapacity, death or otherwise. Contractor shall at all times comply with the Company’s rules, policies, and procedures with regard to sales and all other aspects of the Services hereunder, and Contractor acknowledges and agrees that the Company shall have the right to modify any such rules, policies, and procedures at any time in the Company’s sole discretion.
2. Compensation. The compensation due Contractor is set forth on Exhibit A hereto.
3. Independent Contractor Relationship. The Parties agree that the relationship between them created by this Agreement is that of company and independent contractor. Accordingly, the Contractor agrees to be solely responsible for the payment and withholding of taxes from the compensation paid by the Company hereunder, as applicable. As an independent contractor, Contractor shall have the sole right and responsibility to determine the manner, method, time involved, and means of performance by which Contractor renders the Services, subject to any reasonable request, recommendation, or procedure of the Company.
4. Indemnification of the Company. The Contractor shall indemnify, defend and hold harmless the Company and the Company’s members, officers, directors, affiliates, employees, agents, and assigns (collectively, the “**Company Indemnified Parties**”) from and against any and all liability or loss, and against all claims, damages or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with the performance of the Contractor’s duties and responsibilities pursuant to this Agreement or by



conditions created thereby, or based upon a violation of any statute, ordinance, or administrative regulations, and the defense of any such claims or actions. The Contractor shall also indemnify the Company Indemnified Parties against all liability and loss in connection with, and shall assume full responsibility for, payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, workers' compensation, social security, and income tax laws with respect to the Contractor's employees engaged in the performance of this Agreement.

5. Proprietary Rights of Company

(a) Contractor agrees and acknowledges that all ownership, title, intellectual property, and other proprietary rights (including, without limitation, all patents, copyrights, trademarks, and trade secrets) (collectively, "**Proprietary Rights**") in the Services developed for Company by Contractor or any representative of Contractor shall automatically vest in Company, and Contractor hereby assigns all such Proprietary Rights in such Services to Company. Work product of Contractor and components thereof, and all related and/or derivative works and/or materials created by Contractor for benefit of the Company pursuant to this Agreement shall be the sole and exclusive property of the Company.

(b) Contractor agrees that it shall not, either directly or through its representatives, claim any Proprietary Rights with respect to the Services provided to Company and that any work performed by Contractor or its Representatives for Company shall be considered a "Work for Hire" and Company shall own all rights comprised in any copyright obtained or obtainable by Contractor with respect to the Services.

6. Certain Contractor Covenants. The Contractor expressly covenants and agrees to and with the Company as follows:

(a) *Non-Competition*. During the Term of this Agreement and for a period of two years thereafter, the Contractor agrees that Contractor will not perform services or be employed by any entity, person, firm, or corporation (i) which engages in business in competition with the Company or any subsidiary or affiliate thereof or (ii) which is a current or former client of the Company, unless expressly approved in writing in advance by the Company in the Company's sole and absolute discretion. If a court of competent jurisdiction determines that any covenant contained herein is unreasonable because of its term or scope, or for any other reason, the Parties agree that such court may reform the conditions of such covenant so that it is reasonable under the circumstances and that this covenant, as reformed, shall be enforceable.

(b) *Non-Solicitation*. During the Term of this Agreement and for a period of two years thereafter, the Contractor agrees that Contractor will not, directly or indirectly, for the Contractor or on behalf of any other person, firm, entity, or other enterprises other than the Company, hire, entice away or in any other manner persuade any employee, contractor, customer or vendor of the Company to alter, modify or terminate their relationship with the Company.

(c) *Non-Disparagement*. During the Term of this Agreement and for a period of two years thereafter, Contractor shall not engage in any conduct or communications, public or private, whether oral or in writing, whether true or untrue, in a blog or social media post or otherwise, which may disparage, insult, harass, embarrass or discredit the Company or its affiliates.



(d) *Confidential Information.* In connection with Contractor's relationship with the Company in accordance with this Agreement, Contractor will or may have access to confidential and proprietary information with respect to the Company, which may include, without limitation, financial information, service methods, marketing information, intellectual property, customer data, and any other information learned by Contractor as a result of its involvement with the Company (collectively, "**Trade Secrets**"). Contractor agrees to hold all Trade Secrets in confidence and not discuss, communicate or transmit to others, or make any unauthorized copy of or use the Trade Secrets in any capacity, position or business except as it directly relates to the performance by Contractor of the Services hereunder. Contractor agrees to use the Trade Secrets only in furtherance of proper business-related reasons of the Company to further the interest of the Company; to take all reasonable actions that Company deems necessary or appropriate to prevent unauthorized use or disclosure of or to protect the interest of the Company in the Trade Secrets; and that any of the Trade Secrets, whether prepared by Contractor or which may come into Contractor's possession during Contractor's affiliation hereunder, are and remain the property of the Company, and all such Trade Secrets, including copies thereof, together with all other property belonging to any of the Company or its affiliates, or used in its respective businesses, shall be delivered to or left with the Company upon termination of this Agreement.

The foregoing confidentiality provisions of this Agreement do not apply to (i) information that by means other than Contractor's deliberate or inadvertent disclosure becomes well known to the public; or (ii) disclosure compelled by judicial or administrative proceedings after Company diligently tries to avoid each disclosure and affords the Company the opportunity to obtain assurance that compelled disclosures will receive confidential treatment. The Contractor specifically waives any rights to customer names, customer lists, and customer files (including any parts thereof).

(e) *Representations and Warranties.* Contractor warrants and represents that (i) the Services shall be done in a workmanlike, timely, and professional manner and shall meet the deadlines and performance milestones agreed between Contractor and the Company; (ii) Contractor is knowledgeable and competent in the Services to be performed hereunder; (iii) Contractor is duly authorized to enter into this Agreement; (iv) Contractor's performance of the Services pursuant to this Agreement does not violate any agreement or obligation between Contractor and any third party; (v) the work as delivered to the Company hereunder will not infringe upon any copyright, patent, trade secret, or other proprietary right held by any third party.

(f) *Remedies for Breach.* The Contractor acknowledges that the covenants contained in Section 6 of this Agreement are independent covenants and that any failure by the Company to perform its obligations under this Agreement shall not be a defense to enforcement of the covenants contained in this Section 6, including but not limited to, a temporary or permanent injunction, and any available recourse under applicable law. The Contractor acknowledges that damages in the event of Contractor's breach of this Section 6 will be difficult, if not impossible, to ascertain, and it is therefore agreed that the Company, in addition to, and without limiting any other remedy or right it may have under this Agreement or applicable law, shall have the right to an injunction enjoining the said breach. Contractor agrees to reimburse Company for all costs and expenses, including reasonable attorney's fees, incurred by Company because of any breach of this provision.



(g) *Reasonableness of Covenants.* The Contractor has carefully considered the nature and extent of the restrictions upon Contractor and the rights and remedies conferred upon the Company under this Section 6, and hereby acknowledges and agrees that, in light of Contractor's position, the information to which Contractor will be privy, and the nature of the business, the same are reasonable and fair, are fully required to protect the Company's legitimate interests, and do not confer a benefit upon the Company disproportionate to any detriment to the Contractor.

(h) *Disgorgement of Profits.* If the Contractor breaches any of the agreements contained in this Section 6, then, in addition to any other rights or remedies which the Company may have, the Company shall have the right to an accounting and repayment of all profits or other benefits directly realized as a result of any such breach, to collect any damages caused by such breach in addition to those specifically listed herein, and to enforce any legal or equitable remedy (including injunctive relief) that it may have against the Contractor to prevent further injury to the Company resulting from such breach.

(i) *Survival.* All covenants and provisions contained in Sections 6 shall survive the expiration of this Agreement and the termination of the Contractor's engagement by Company, regardless of the reason of such expiration or termination.

7. Notices. Any notice or other communication required or desired to be given hereunder shall be in writing and shall be deemed duly given when personally delivered or when deposited in the United States mail, first-class postage prepaid, properly addressed to the parties at their respective addresses set forth at the end of this Agreement or such addresses as shall be given by notice of any party.

8. Return of Materials. Upon termination of this Agreement for any reason by either Party, Contractor shall return to the Company all drawings, notes, memoranda, specifications, designs, writings, software, devices, documents, materials, equipment, electronic devices, and any other material, including without limitation any items containing or disclosing any confidential or proprietary information of the Company or of the Company's past or present clients. Contractor will not retain any such materials.

9. Waiver; Remedies Cumulative. No waiver of any right or option hereunder by any party shall operate as a waiver of any other right or option, or the same right or option as respects any subsequent occasion for its exercise, or of any legal remedy. No waiver by any party of any breach of this Agreement or of any agreement or covenant contained herein shall be held to constitute a waiver of any other breach or a continuation of the same breach. All remedies provided by this Agreement are in addition to all other remedies by it or the law provided.

10. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and the successors and assigns of the Company. Neither this Agreement nor any rights hereunder shall be assignable by the Contractor, and any such purported assignment by Contractor shall be null and void and of no force or effect whatsoever.

11. Dispute Resolution. This Agreement shall be governed by, and construed in accordance with, the laws of the state of the Company's principal place of business. In the event of a dispute between the Parties arising out of or in connection with the execution, interpretation, performance



or nonperformance of the Services or other matters referenced in this letter, the Parties shall first attempt, in good faith, to amicably resolve such matter. If the dispute, in whole or in part, cannot be resolved, the unresolved matter(s) shall be submitted to binding arbitration for resolution. Such arbitration shall be conducted in the county of the Company's principal place of business and shall be done in accordance with the rules of commercial arbitration of the American Arbitration Association. The non-prevailing party in such arbitration shall pay all costs and expenses of the arbitration.

12. Miscellaneous. The invalidity or unenforceability of any term or provision of this Agreement shall not impair or affect the other provisions hereof, which shall remain in full force and effect. This Agreement constitutes the entire understanding between the parties concerning the Contractor's Services for the Company and supersedes all previous agreements between the Contractor and the Company concerning such Services. Any determination, consent, waiver, agreement, or other action under or with respect to this Agreement and its implementation of or by the Company shall not be deemed made, taken, or effected hereunder unless made, taken or effected in a writing signed by a duly authorized officer of the Company. This Agreement (including Exhibit A hereto) cannot be amended or modified in any respect, unless such amendment or modification is evidenced by a written instrument signed by both the Company and the Contractor. The captions of the various sections and subsections of this Agreement are not a part of the context hereof, are inserted merely for convenience in locating the different provisions hereof and shall be ignored in construing this Agreement.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date set forth at the beginning hereof.

COMPANY:

CONTRACTOR:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



Exhibit A

This Exhibit is a part of, and is subject in all respect to, the terms and conditions of the Sales Commission Agreement dated _____ between _____ (the “Company”) and _____ (“Contractor”), to which this Exhibit is attached (the “Agreement”).

Effective Date: Contractor’s service under the Agreement shall commence on: _____.

Term: _____ from the Effective Date.

Description of Services: _____

Hours of Service: Contractor shall work and be available at least _____ hours per week, and must be available between the hours of _____ and _____, local time, on the following days: _____, at a minimum.

Invoicing: Contractor shall submit a weekly invoices to Company, pursuant to the following instructions:

Contractor will be paid by the Company within _____ days following receipt by the Company of such invoices, or as follows: _____

Base Compensation: Contractor shall be paid a flat rate, in arrears, in the amount of \$ _____, per _____. As a condition of payment hereunder, Contractor shall provide invoice to the Company as set forth above.

Bonus: The Company may reward exceptional work from time to time, in the Company’s sole and absolute discretion.



Sales Commission: In addition to any other compensation provided herein, Contractor shall be entitled to a sales commission calculated as follows: _____

Such commissions shall be payable on the following schedule and based upon the following terms: _____

Contractor shall not be entitled to commissions if Contractor is in breach or default of the Agreement; in the event Contractor no longer provides Services hereunder; or in the event Contractor fails to comply with the Company's rules, policies, and procedures, as the same may be modified by the Company from time to time. The Company agrees to provide Contractor a calculation of the basis upon which the commission amount has been derived hereunder, upon reasonable request of Contractor.

