

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (this “Agreement”) is made and entered into as of _____, 20____, between _____ (“Contractor”), and _____ (the “Company”). The parties hereto are sometimes referred to herein as a “Party” or the “Parties.”

RECITALS

WHEREAS, 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 sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Engagement of Contractor; Term.** The Company hereby engages the Contractor to perform the services substantially described as follows: _____

(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 represents and warrants to the Company that Contractor has the requisite skill set, experience, ability, authority, and available time to perform the Services as contemplated herein. Contractor shall execute its duties hereunder professionally and in good faith and applying its reasonable best efforts at all times. The Parties expressly understand and agree that the Contractor is engaged and shall serve as an independent contractor and not as an employee of the Company or any affiliate thereof.

This engagement shall commence on _____.

Select, as applicable:

- This engagement shall automatically end on _____, without the need for termination notice.
- This engagement shall be for a term of _____.
- This engagement shall automatically renew for successive _____ periods unless and until terminated by either Party, or unless earlier terminated as provided herein.



- Either Party may terminate this Agreement at any time, upon 30-days advance written notice to the other Party, with or without cause, and without further obligation to the other.
- The Company shall have the right to terminate this Agreement immediately based upon cause or default by the Contractor, or in the event Contractor becomes unwilling or unable to perform the Services because of illness, incapacity, death, or otherwise.

Upon termination of this Agreement, neither Party shall have any further obligations to the other hereunder (except, in the case of the Company, to pay any accrued but unpaid compensation to Contractor as of the date of such termination, and in the case of the Contractor, to return any and all Company materials). Notwithstanding the foregoing, the Contractor's covenants set forth in Section 6 hereof shall survive expiration or termination of this Agreement.

2. Compensation. The compensation due to Contractor shall be as follows:

Check box, as applicable:

- Hourly rate of \$_____ per hour
- Fixed fee of \$_____
- Other: _____
- An upfront retainer or payment of \$_____ shall be required.
- No upfront retainer or payment shall be required.

Compensation shall be payable as follows:

- When invoiced to Client. Payable within ____ days of receipt of invoice.
- Daily
- Weekly
- Bi-Weekly
- Upon completion of the Services



Other. Describe milestones: _____

3. Independent Contractor Relationship. The Parties agree that the relationship between them created by this Agreement is that of a company and an independent contractor. The Contractor expressly agrees that no withholdings will be remitted by the Company for any federal, state, or local taxes, social security, FICA, or other United States or foreign taxes from the amounts paid to the Contractor by the Company pursuant to this Agreement, and further agrees that Contractor will not be entitled to any benefits payable by the Company to its employees, including but not limited to insurance, workers' compensation, retirement benefits, unemployment compensation, paid vacation or sick leave, and the like. The Contractor further agrees to be solely responsible for the payment and withholding of such taxes from the compensation paid by the Company hereunder. 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. Contractor shall be solely responsible for providing its own transportation, and any supplies Contractor may deem necessary to perform the Services.

4. Indemnification. 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, but in any event excluding to the extent attributable to the negligence of such Company Indemnified Party. 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. Ownership of Copyrighted Work Product. The work product of Contractor and components thereof, and all related and/or derivative works and/or materials created by Contractor for the benefit of the Company pursuant to this Agreement (collectively, "Works"), shall be the sole and exclusive property of the Company. Contractor agrees that all Works created by Contractor or under Contractor's direction are "works made for hire," as defined by 17 U.S.C.A. § 101 of the Copyright Act of 1976, as amended, and that the Works shall be the sole and complete property of the Company and that any and all copyrights to such works shall belong solely to the Company. To the extent the Works are not deemed "works made for hire," Contractor hereby assigns, in perpetuity, all proprietary rights, including but not limited to copyright, in all such Works to the Company without further or additional compensation. If the Company is unable to secure Contractor's authorization or signature to apply for or to pursue an application for any United States or foreign copyright registrations covering any such Works assigned to the Company



as above, then the Contractor hereby irrevocably designates and appoints the Company and its authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and on his behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further prosecute any copyright registrations thereon with the same legal force and effect as if executed by Contractor.

6. Certain Contractor Covenants. The Contractor expressly covenants and agrees as follows:

(a) *Non-Competition.*

During the Term of this Agreement, 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.

The non-competition covenant shall not apply.

(b) *Non-Solicitation.* During the Term of this Agreement, 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, 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 returned to 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.

(e) *Representations and Warranties.* Contractor warrants and represents that (i) the Services shall be done in a 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 this 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) *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. Trademark and Related Rights. Contractor agrees that any trademark, service mark, collective mark, certification mark, trade dress, or other similar intellectual property right created



wholly or in part or under this Agreement shall be the sole and complete property of the Company and shall belong solely to the Company. To the extent that such trademark, service mark, collective mark, certification mark, trade dress, or other similar intellectual property rights are not deemed to be owned by the Company, Contractor hereby assigns, in perpetuity, all proprietary rights, including but not limited to trademark, service mark or trade dress, in such marks to the Company without further or additional consideration. If the Company is unable to secure the Contractor's authorization or signature to apply for or to pursue an application for any United States or foreign trademark, service mark, trade dress, or similar registrations covering the Works assigned to the Company as above, then Contractor hereby irrevocably designates and appoints the Company and its authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and on Contractor's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further prosecute any trademark, service mark, trade dress or similar registrations thereon with the same legal force and effect as if executed by Contractor.

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 their respective successors and assigns. Unless approved in advance in writing by the Company, neither this Agreement nor any rights or duties hereunder shall be assignable or delegable by the Contractor, and any such purported assignment or delegation 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 _____. In the event of a dispute between the Parties, the Parties shall first attempt, in good faith, to amicably resolve such matter. If a good faith effort to resolve the dispute is not effective, said dispute shall be submitted to mediation for resolution. The cost of any such mediation shall be split equally between the Parties. If the dispute, in whole or in part, cannot be resolved via mediation, the unresolved matter(s) shall be submitted to binding arbitration for resolution. Such arbitration shall be conducted in the State of _____, 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. This Agreement 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, and shall be ignored in construing this Agreement.

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

The Company: _____

Contractor: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

