

FORM OF INDEPENDENT CONTRACTOR AGREEMENT

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This Independent Contractor Agreement (the "Agreement") is made as of _____ between _____ with its principal place of business located at _____ (the "Company") and _____, located at _____ (the "Contractor").

WHEREAS, Company requests Contractor to perform services for it and may request Contractor to perform other services in the future; and

WHEREAS, the Company and Contractor desire to enter into an agreement, which will define respective rights and duties as to all services to be performed;

NOW, THEREFORE, in consideration of covenants and agreements contained herein, the parties hereto agree as follows:

1. Consulting Services

Effective _____ Company shall retain Contractor and Contractor shall provide Company with consulting services (the "Consulting Services"), which shall include, without limitation:

2. Changes

(a) **Change Orders.** The Company, without invalidating this Agreement, may order changes in the work within the general scope of the Agreement consisting of additions, deletions, or other revisions.

(b) **Change Order Requirements.** All changes order shall be a written order signed by the Company and shall specify:

(i) the elements of the Services to be changed change,

(ii) the reason for the requested change, and

(iii) the impact, if any, that the requested change will have on (A) the compensation, (B) time for performance or (C) any other terms or conditions of this Agreement.

(c) **Adjustments to Compensation.** In the event that any such changes materially impact the

cost to the Contractor of performing the Services or the time required for such performance, the parties shall negotiate in good faith a reasonable and equitable adjustment in the applicable Fees and schedule, as applicable.

3. Compensation

(a) **Amount.** The work performed by Contractor shall be performed at the rate set forth below, and not exceed the total estimated amount specified below:

Hourly fee: \$ _____

Total estimated amount: \$ _____

(b) **Payment.** Invoices shall be issued to Company by Contractor monthly after performance of the Work, and payment shall be due _____ business days after receipt of invoices.

(c) **Taxes.** Company shall not be responsible for federal, state and local taxes derived from the Contractor's net income or for the withholding and/or payment of any federal, state and local income and other payroll taxes, workers' compensation, disability benefits or other legal requirements applicable to Contractor.

4. Expenses

(a) **Payment.** A Company shall reimburse Contractor for all pre-approved, reasonable and necessary expenses, including, without limitation, domestic and foreign travel, lodging and meal expenses incurred in connection with the Consulting Services.

(b) **Substantiation.** The Contractor shall provide Company with documentation supporting all expenses.

(c) **Payment.** Company shall reimburse Contractor within _____ days upon receipt of a request for reimbursement from the Contractor.

5. Independent Contractor Status

(a) **Status.** Contractor is an independent contractor of Company. Nothing contained in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship.

(b) **No Authority.** Contractor shall have no authority to act as agent for, or on behalf of, Company, or to represent Company, or bind Company in any manner.

(c) **No Employee Benefits.** Contractor shall not be entitled to worker's compensation, retirement, insurance or other benefits afforded to employees of Company.

6. **Representations and Warranties.** The Company and the Contractor respectively represents and warrants to each other that each respectively is fully authorized and empowered to enter into

the Agreement and that their entering into the Agreement and to each parties' knowledge the performance of their respective obligations under the Agreement will not violate any agreement between the Company or the Contractor respectively and any other person, firm or organization or any law or governmental regulation.

7. Confidential Information

Contractor and its employees shall not, during the time of rendering services to the Company or thereafter, disclose to anyone other than authorized employees of the Company (or persons designated by such duly authorized employees of the Company) or use for the benefit of Contractor and its employees or for any entity other than the Company, any information of a confidential nature, including but not limited to, information relating to: any such materials or intellectual property; any of the Company projects or programs; the technical, commercial or any other affairs of the Company; or, any confidential information which the Company has received from a third party.

8. Intellectual Property

(a) **Work Product.** During the course of performing the Consulting Services, Contractor and its directors, officers, employees, or other representatives may, independently or in conjunction with Company, develop information, produce work product, or achieve other results for Company in connection with the Consulting Services it performs for Company.

(b) **Ownership.** Contractor agrees that such information, work product, and other results, systems and information developed by Contractor and/or Company in connection with such Consulting Services (hereinafter referred to collectively as the "Work Product") shall, to the extent permitted by law, be a "work made for hire" within the definition of Section 101 of the Copyright Act (17 U.S.C. 101), and shall remain the sole and exclusive property of Company.

(c) **Assignment of Interest.** To the extent any Work Product is not deemed to be a work made for hire within the definition of the Copyright Act, Contractor with effect from creation of any and all Work Product, hereby assigns, and agrees to assign, to Company all right, title and interest in and to such Work Product, including but not limited to copyright, all rights subsumed thereunder, and all other intellectual property rights, including all extensions and renewals thereof.

(d) **Moral Rights.** Contractor also agrees to waive any and all moral rights relating to the Work Product, including but not limited to, any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use, and subsequent modifications.

(e) **Assistance.** Contractor further agrees to provide all assistance reasonably requested by Company, both during and subsequent to the Term of this Agreement, in the establishment, preservation and enforcement of Company's rights in the Work Product.

(f) **Return of Property.** Upon the termination of this Agreement, Contractor agrees to deliver promptly to Company all printed, electronic, audio-visual, and other tangible manifestations of the

Work Product, including all originals and copies thereof.

9. Non-Solicitation.

During the term of this Agreement and for _____ after any termination of this Agreement, Contractor will not, without the prior written consent of the Company, either directly or indirectly, on Contractor 's own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by the Company, or any customer of the Company.

10. Term

This Agreement shall commence on the date and year first above written and shall continue for a period of _____ unless earlier terminated in accordance with this Agreement.

11. Termination

(a) **Notice of Termination.** This Agreement may be terminated by either the Company or the Contractor at any time for any reason, with or without cause, by giving _____ days from written notice of termination.

(b) **Payment Upon Termination.** The Company will pay Contractor for all Services performed by Contractor through the date of termination.

12. Indemnification

(a) **Indemnification by Contractor.** Contractor agrees to indemnify and hold harmless Company and its officers, directors, employees and agents, from and against all claims, liabilities, losses, costs, damages, judgments, penalties, fines, attorneys' fees, court costs and other legal expenses, insurance deductibles and all other expenses arising out of or relating to, directly or indirectly, from:

(i) the negligent, grossly negligent, or intentional act or omission of Contractor or its directors, officers, employees, agents or Contractors,

(ii) Contractor's failure to perform any of its obligations under this Agreement, and

(iii) any act or omission of Contractor in connection with the Work.

(b) **Notification.** Company will promptly notify Contractor of any claim for indemnification.

(c) **Survival.** Contractor's obligations under this Section 10 shall survive termination or expiration of this Agreement.

13. Insurance

(a) **Coverage.** Throughout the term of this Agreement, Consultant shall maintain workers compensation insurance in the amount required by statute and comprehensive general liability

insurance with coverage of at least one million dollars per occurrence for bodily injury, property damage or other losses in connection with the provision of Services by Consultant pursuant to the terms of this Agreement.

(b) **Certificates.** At Company's request, Consultant shall provide certificates or other acceptable evidence of insurance evidencing the foregoing coverage and shall provide Company with prompt written notice of any material change to the same.

(c) **Additional Insurance.** The Consultant acknowledges that a given project may require additional insurance and such additional insurance shall be set forth on the applicable Statement of Work.

14. General Provisions

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements, representations and understandings of the parties, written or oral.

(b) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(c) **Amendment.** This Agreement may be amended only by written agreement of the parties.

(d) **Notices.** All notices permitted or required under this Agreement shall be in writing and shall be delivered in person or mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified in this Agreement or such other address as either party may specify in writing. Such notice shall be deemed to have been given upon receipt.

(e) **Assignment.** This Agreement shall not be assigned by either party without the consent of the other party.

(f) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of _____, without regard to its conflict of laws rules.

(g) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

IN WITNESS WHEREOF, the Company and the Contractor have each executed and delivered this Agreement as of the Effective Date.

