

**INDEPENDENT CONTRACTOR AGREEMENT**  
**SAMPLE INC.**

THIS INDEPENDENT CONTRACTOR AGREEMENT (this "**Agreement**") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (the "**Effective Date**"), by and between [Contractor] \_\_\_\_\_ (the "**Contractor**") and \_\_\_\_\_ [Employer] \_\_\_\_\_, a [Type of Entity] \_\_\_\_\_ (the "**Company**") (each, a "**Party**" or, collectively, the "**Parties**").

**RECITALS**

**WHEREAS**, the Company desires to obtain \_\_\_\_\_ services from the Contractor for the purpose of \_\_\_\_\_;

**WHEREAS**, the Contractor has substantial experience and expertise in the provision of \_\_\_\_\_ services to \_\_\_\_\_ operating in the \_\_\_\_\_ industry;

**WHEREAS**, the Contractor is willing to perform and provide such services to the Company in accordance with the terms and conditions described throughout this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants as forth herein, the parties hereto agree as follows:

**AGREEMENT**<sup>1</sup>

**1. SERVICES, FEES, AND PAYMENT.**

1.1. Scope of Services. The Company engages Contractor as an independent contractor to provide the following services (collectively, the "**Services**"), as described herein:

A. \_\_\_\_\_;

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

B. \_\_\_\_\_;

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

C. \_\_\_\_\_;

a. \_\_\_\_\_

- b. \_\_\_\_\_
- c. \_\_\_\_\_
- D. \_\_\_\_\_;
- E. \_\_\_\_\_;
- F. \_\_\_\_\_; and
- G. \_\_\_\_\_.

1.2. Manner of Performing Services. The place, and manner, of performance with respect to the Services shall be determined at the sole discretion of the Contractor.

1.3 Monthly Compensation. The Company, over the course of the Term of this Agreement, shall pay to the Contractor, as compensation for the Services provided in this Agreement by the Contractor, a monthly amount equal to \_\_\_\_\_ (\$\_\_\_\_\_.00), which shall be prorated if (i) the Effective Date of this Agreement begins after the 1st calendar day of the Effective Date month, or (ii) the Term ends, for whatever reason, prior to the last calendar day of such applicable month. Payments shall be made in accordance with the Company’s standard practices so long as the Contractor continues to fulfill the Contractor’s duties and Services as set forth above and throughout this Agreement.

1.4 Car Allowance. During the Term of this Agreement, the Company shall pay the Contractor a car allowance in the amount of \$\_\_\_\_\_.00 per month, subject to any standard Company practices.

1.5 Approved Expenses. In addition to the Compensation payments and car allowance payments under *Section 1.4* and *1.5*, respectively, the Company shall reimburse the Contractor for Contractor’s payment of ordinary, necessary, and reasonable expenses of travel, lodging, and other necessary and reasonable expenses incurred by the Contractor in the performance of his or her Services, provided, however, that such expenses are:

- A. Supported by original receipts or other supporting documentation (sufficient to be audited and included in the Company’s tax return); and,
- B. Submitted along with a Services report describing the Services in connection with which the business expenses are claimed

Reimbursement of such expenses shall be paid to Contractor within thirty (30) days of Company’s receipt of satisfactory written documentation, setting out the expense incurred by the Contractor, in accordance with any and all Company reimbursement or expense policies.

1.6 Benefits. Both the Company and the Contractor hereby acknowledge and agree that, as this is an independent contractor agreement, the Contractor will receive no Company-sponsored benefits from the Company; accordingly, the Contractor acknowledges it's understanding that he or she shall not receive any paid vacation, sick leave, medical insurance, or retirement benefit. If the Contractor is reclassified by a state or federal agency, or court of competent jurisdiction, as the Company's employee, the Contractor shall be reclassified as an employee and shall receive no benefits from the Company, except those mandated by state or federal law, even if by the terms of the Company's benefit plan(s), or program(s), of the Company in effect at the time of such reclassification, the Contractor would otherwise be eligible for such benefits.

## **2. TERM AND TERMINATION.**

2.1. Term. The term of this Agreement shall commence on the Effective Date, above, and shall continue until the earlier of (i) \_\_\_\_\_ (months or years) from the Effective Date or (ii) termination of the Agreement in accordance with *Section 2.2*.

2.2. Termination. Either party to this Agreement may terminate the Agreement upon giving the other party seven (7) days written notice of such termination pursuant to *Section 11* of the Agreement.

2.3. Survival. The provisions of *Sections 3, 4, 7, 8, 9, and 13* of this Agreement, notwithstanding anything to the contrary, as well as all obligations of each party that have accrued before the effective date of termination of this Agreement and that are of a continuing nature, will survive termination or expiration of this Agreement.

## **3. INDEPENDENT CONTRACTOR; INDEMNIFICATION.<sup>2</sup>**

3.1. It is the express intention of both the Company and the Contractor that the Contractor perform the Services, as provided for herein this Agreement, as an independent contractor to the Company. Nothing in this Agreement shall in any way be construed to constitute Contractor as an agent, employee, representative, joint venture, legal representative, or partner of the Company, unless otherwise authorized by the Company's board of Contractors. Without limiting the generality of the foregoing, Contractor is not authorized to bind the Company to any liability or obligation, or to represent that Contractor has any such authority. Contractor acknowledges and agrees that Contractor is obligated to report as income all Compensation, and other monies, received by Contractor pursuant to this Agreement. Contractor agrees to, and acknowledges, the obligation to bear all employment or self-employment obligations and other taxes on such income as may correspond. The Company shall assume no responsibility in such determination. The Company, however, recognizes that to the extent the provisions of this Agreement result in the creation of an

agency relationship, one which would allow the Contractor to perform certain of the Services on behalf of the Company, then the Contractor shall, in that context only, be the agent of the Company as the case may be.

3.2. The Contractor is not entitled to participate in any benefits or pension plan provided by the Company to any of its employees. Except as is required by law, the Contractor will not receive any of the following or similar payments from the Company: vacation pay; holiday pay; sick pay; overtime pay; benefits; or automobile allowance or company car.

3.3. Subject to compliance with the provisions of this Agreement, the Contractor may, at any time or times during the Term, carry on the business of providing services to the general public either alone or in association or partnership with another or others, so long as such provision of services does not: create a conflict of interest with the interests of the Company; hinder the Contractor from his commitment to providing the Services to the Company; or prevent the Contractor from providing the Services in a timely and competent manner.

3.4. The Contractor agrees to indemnify and hold harmless the Company and its affiliates, and their directors, officers and employees, from and against all taxes, losses, damages, liabilities, costs, and expenses, including attorneys' fees and other legal expenses, arising directly or indirectly from, or in connection with, (i) any negligent, reckless, or intentionally wrongful act of Contractor or Contractor's assistants, employees, contractors, or agents, (ii) a determination by a court or agency that the Contractor is not an independent contractor, (iii) any breach by the Contractor or Contractor's assistants, employees, contractors, or agents of any of the covenants contained in this Agreement and any corresponding or ancillary agreement(s) with the Company, or (iv) any failure of Contractor to perform the Services in accordance with all applicable federal, state, and local laws, rules, and regulations.

#### **4. LIMITATION OF LIABILITY.<sup>3</sup>**

IN NO EVENT SHALL THE COMPANY BE LIABLE TO CONTRACTOR OR TO ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS OR LOSS OF BUSINESS, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL THE COMPANY'S LIABILITY ARISING OUT OF, OR IN CONNECTION WITH, THIS

AGREEMENT EXCEED THE AMOUNTS PAID BY COMPANY TO CONTRACTOR UNDER THIS AGREEMENT FOR THE SERVICES GIVING RISE TO SUCH LIABILITY.

5. **PERSONAL SERVICE AND NON-ASSIGNMENT.**

This contract is an agreement relating to the provision of Services by the Contractor personally. Therefore, the Contractor's rights, interests, obligations, and duties hereunder shall not be transferred, assigned, or delegated to any third-party without the Company's prior written consent.

6. **OWNERSHIP AND RETURN OF PROPERTY.**

6.1. All property including, but not limited to, files, manuals, equipment, securities, or monies of any and all customers of the Company related to the provision of the Services that are, from time to time, in the possession or control of the Contractor will be, at all times, the exclusive property of the Company. The Contractor shall forthwith deliver all aforesaid property to the Company on the earlier of:

- A. The termination of this Agreement, or
- B. Upon the request, at any time, by the Company.

6.2. The Contractor agrees that upon termination of this Agreement, Contractor shall at once deliver to the Company all books, manuals, reports, documents, records, effects, money, securities, whether in print or stored electronically, or other property belonging to the Company or for which the Company is liable to others which are in Contractor's possession, charge, control, or custody.

7. **CONFIDENTIALITY.**

7.1. The Contractor acknowledges and agrees that the Company has, or may have, certain confidential information which may include knowledge of trade secrets, whether patented or not, computer programs, research and development data, testing and evaluation plans, business plans, opportunities, forecasts, products, strategies, proposals, suppliers, sales, manuals, work programs, financial and marketing information, customer lists or names, and information regarding customers, contracts and accounts of the Company whether printed, stored electronically, or provided verbally (the "**Confidential Information**"). Notwithstanding the foregoing, Confidential Information shall not include:

- A. information that has become generally available to the public other than as a result of a disclosure in breach of this Agreement;

- B. information that is lawfully received on a non-confidential basis by the Contractor from a source other than the Company or any of its respective subsidiaries, parent company, affiliates, Contractors, officers, employees, agents, advisors or other representatives and such source is not prohibited from transmitting or disclosing the data or information by reason of any contractual, legal or fiduciary obligation; or
- C. information that the Contractor must disclose pursuant to the requirements of law, provided that the Contractor provides prompt written notice to the Company of such required disclosure so that the Company may seek a protective order or other appropriate remedy or waive compliance with the requirements of this Agreement. In the event that such protective order or other remedy is not obtained, or the Company does not waive compliance with the requirements of this Agreement, the Contractor agrees to furnish only that portion of the information that she is advised by her legal counsel in writing that she is legally required to disclose and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to such information.

7.2. The Contractor acknowledges and agrees that the Confidential Information developed or acquired by the Company is among the Company's most valuable assets and its value may be destroyed by dissemination or unauthorized use.

7.3. The Contractor agrees that Contractor will treat as confidential and will not, without the prior written consent of a majority of the Company's board of directors, publish, release, disclose, or permit to be published, released, or disclosed, either before or after the termination of this Agreement, any Confidential Information other than for the Company's purposes and benefit.

7.4. The Contractor agrees that during the term of this Agreement and for twelve (12) months thereafter, Contractor will not use, directly or indirectly, any Confidential Information for Contractor's own benefit or for the benefit of any person competing, or endeavoring to compete with, the Company.

## **8. CONFLICT AND NON-COMPETITION.**

8.1. The Contractor will not, during the Term, provide any service to any person where the performance of that service may or does, in the reasonable opinion of the Contractor or the actual knowledge of the Contractor, give rise to a conflict of interest between the obligations of the Contractor under this Agreement, and the obligations of the Contractor to such other person.

8.2. If the Contractor is asked by any person otherwise than pursuant to this Agreement, to perform a service the performance of which in the reasonable or actual opinion of the Contractor might result in the Contractor breaching *Section 8.1*, then the Contractor shall forthwith notify the

Company's board of directors of the particular circumstances and the Company's board of directors will thereafter promptly determine and notify the Contractor whether or not the Contractor may, in light of those circumstances and *Section 8.1*, perform that service.

8.3. The Contractor agrees that Contractor will not, without the prior written consent of the Company, at any time within twelve (12) months following termination of this Agreement, on Contractor's own behalf, or on behalf of any person competing or endeavoring to compete with the Company, directly or indirectly solicit, endeavor to solicit, or seek to gain the custom of, canvass, or interfere with any person that:

- A. Is a customer of the Company as of the date of termination of this Agreement;
- B. Was a customer of the Company at any time within twelve (12) months prior to the date of termination of this Agreement; or
- C. Has been pursued as a prospective customer by or on behalf of the Company at any time within twelve (12) months prior to the date of termination of this Agreement, and in respect of whom the Company has not determined to cease all such pursuit.

8.4. The Contractor agrees and confirms that the restrictions in *Section 8.3* are reasonable and waives all defences to the strict enforcement of them by the Company.

8.5. The Contractor agrees and confirms that *Sections 8.3(A), 8.3(B), and 8.3(C)* are each separate and distinct covenants, severable one from the other, and if any such covenant or covenants are determined to be unenforceable in whole or in part, such unenforceability shall attach only to the covenant or covenants as determined, and all other such covenants shall continue in full force and effect.

## **9. COOPERATION.**

In the event of any claim, litigation, or other court action actually against, or threatened against, the Company and/or the Contractor and based upon any alleged conducts, acts, or omissions of the Contractor as a Contractor of the Company during the Term of this Agreement or otherwise, whether known or unknown, threatened or not as of this Agreement, the Company shall cooperate with the Contractor and provide to the Contractor any such information and/or documents as are necessary and reasonably requested by the Contractor, or the Contractor's counsel, subject to any and all restrictions imposed by federal or state securities laws, court orders, and/or injunctions. The Company shall, to the greatest extent possible, cooperate in all respects in order to ensure that the Contractor has access to all available insurance coverage, if provided, and the Company shall do nothing to damage the Contractor's status as an insured, but only if insurance coverage was

provided, and shall provide all necessary information for the Contractor to make, or tender, any claim under such applicable coverage if in existence for the Contractor.

**10. REMEDIES, ARBITRATION, AND VENUE.<sup>4</sup>**

Any dispute, controversy, or claim arising out of, or related to, this Agreement, or any breach of this Agreement, shall be submitted to, and decided by, binding arbitration. Arbitration shall be administered exclusively by the American Arbitration Association’s regional office, located in Los Angeles, California, and shall be conducted consistent with the rules, regulations, and requirements thereof (as well as any rules and/or requirements imposed by California State law). Any arbitration award and determination shall be final and binding upon the parties.

**11. NOTICES.**

Notices, as well as all other communications provided for in this Agreement, shall be in writing and shall be delivered, personally or via registered or certified mail, return receipt requested, postage prepaid, to the parties at the addresses as set forth below (or, such other addresses as specified by the parties by notice in accordance with this *Section 11*):

**If to Company:**

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**If to Contractor:**

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**12. OWNERSHIP OF WORK.**

12.1. The Contractor hereby assigns to the Company the Contractor’s entire right, title and interest in and to all discoveries and improvements, patentable or otherwise, trade secrets and ideas, writings and copyrightable material, which may be conceived by the Contractor or developed or acquired by her during the Term of this Agreement, which may pertain directly or indirectly to the business of the Company or any of its subsidiaries, parent company, or affiliates (the “**Work Product**”). The Contractor agrees to disclose fully all such developments to the Company upon the request of the board of directors of the Company, its Chief Executive Officer, or its Chief Financial



Officer, which disclosure shall be made in writing promptly following any such request. The Contractor shall, upon the request of the Company, its Chief Executive Officer, or its Chief Financial Officer, execute, acknowledge and deliver to the Company all instruments and do all other acts which are necessary or desirable to enable the Company or any of its subsidiaries to file and prosecute applications for, and to acquire, maintain and enforce, all patents, trademarks and copyrights in all countries in connection with any component of the Work Product.

12.2. The Contractor agrees to assign, on an ongoing basis throughout the Term of the Agreement, exclusively to the Company in perpetuity, all right, title and interest of any kind whatsoever, in and to the Work Product, including any and all copyrights thereto (and the exclusive right to register copyrights). Accordingly, all rights in and to the Work Product, including any materials derived therefrom or based thereon and regardless of whether any such Work Product is actually used by the Company, shall from its creation be owned exclusively by the Company, and the Contractor will not have or claim to have any rights of any kind whatsoever in such Work Product. Without limiting the generality of the foregoing, Contractor will not make any use of any of the Work Product in any manner whatsoever without the Company's prior written consent, which may be withheld at the sole discretion of the Company.

### **13. NON-DISPARAGEMENT.**

The Contractor and the Company mutually agree to forebear from making, causing to be made, publishing, ratifying, or endorsing any and all disparaging remarks, derogatory statements, or comments made to any party, whatsoever, with respect to either the Contractor or the Company. The parties hereto specifically agree to forbear from making any public or non-confidential statement with respect to any claim or complaint, against either party, without the express written mutual consent of each Contractor and the Company, which must be obtained in advance prior to giving or making any such statement.

### **14. GENERAL.**

14.1. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to all matters herein, and there are no other agreements in connection with this subject matter except as specifically set forth or referred to in this Agreement. This Agreement supersedes any and all prior agreements and understandings relating to the subject matter. Both parties acknowledge that neither of the parties has been induced to enter into this Agreement by any representation or writing not incorporated into this Agreement.

14.2. Governing Law. This Agreement will in all respects be governed exclusively by and construed in accordance with the laws of the State of California.

14.3. Amendments. This Agreement may only be amended if such amendment is confirmed in writing by both parties.

14.4. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one and the same original document. Each party may deliver a counterpart signature page by facsimile transmission.

14.5. Severability. If any portion of this Agreement is declared invalid or unenforceable, in whole or in part, it shall not be deemed to affect or impair the validity or enforceability of any other covenant or provisions herein, and such unenforceable portion shall be severed from the remainder of the Agreement.

14.6. Waivers. A waiver of any default, breach, or non-compliance under this Agreement is not effective unless in writing and signed by the party to be bound by the waiver. No waiver will be inferred from or implied by any failure to act or delay in acting by a party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other party. Any waiver by a party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that party's right under this Agreement in respect of any continuing or subsequent default, breach or non-observance.

14.7. Headings. The headings used in this Agreement are for the convenience of reference only and do not form part of or affect the interpretation of this Agreement.

14.8. Further Assurances. The parties agree to do all such other things and to take all such other actions as may be necessary or desirable to give full effect to the terms of this Agreement.

14.9. Number and Gender. Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

14.10. "Person". In this Agreement, the term "person" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

14.11. Statute. Any reference to a statute in this Agreement, whether or not that statute has been defined or cited, includes all regulations made under it, any amendments made to it and in force, and any statute passed in replacement of or in substitution for it.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date written above.

\_\_\_\_[COMPANY NAME]\_\_\_\_\_

\_\_\_\_[CONTRACTOR NAME]\_\_\_\_\_

/s/\_\_\_\_\_

/s/\_\_\_\_\_

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

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

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

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

***/REMAINDER INTENTIONALLY LEFT BLANK/***

## NOTES

1. This section of the agreement is meant to clearly set out the services being contracted for by the employer, the amount of control the employer will have over the execution of the services, the amount and frequency of payment, and any additional benefits or tools that will be available to the contractor while the agreement is valid. This section is also important in determining the particular nature of the relationship between the contractor and employer. Note that under California Labor Code § 3353, the difference between an employee and an independent contractor depends on whether the employer can exercise absolute control over the methods of completion of a contractor's work (employee) or if the employer can only suggest methods for completing the work (independent contractor).
2. An indemnification clause in an independent contractor agreement primarily benefits the company hiring an independent contractor for specific services; it permits the company to receive money from the contractor following any monetary damages or settlements made against the company as a result of harm caused due to the contractor's work, without the need for a lawsuit against the contractor. Many agreements will include an indemnification clause, however negotiation may occur to limit the maximum amount of money a company can receive.
3. This section of a contract serves to limit the liability of an employer for damages resulting from action that does not directly harm an independent contractor during the course of the contract. However, this section does not completely negate the employer's liability, as they can still be sued for action that directly harms an independent contractor. This direct liability can include, but is not limited to, employee negligence that causes injury and direct damage to the independent contractor's property. Additionally, under California Labor Code § 2750.5, an employer may be required to provide proof that a person performing services for a company is a contractor rather than an employee.
4. The remedies, arbitration, and venue section of an agreement allows parties to a contract to choose where, how, and under what laws to settle legal issues arising between the parties to a contract. California courts are also more likely to enforce arbitration requirements over other forms of dispute settlements, particularly when agreements favor corporations or individuals operating in California. However, note that in certain circumstances, a contractor or employer can avoid forum selection, choice of law clauses, and arbitration agreements by asserting federal jurisdiction over an issue, pursuant to Federal Rule of Civil Procedure 12(b)(6) and 28 U.S.C. § 1404(a) or 28 U.S.C. § 1406, depending on where the complaint is filed.