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INDEPENDENT CONTRACTOR AGREEMENT

Effective Date:

This Independent Contractor Agreement (“Agreement”) is made as of the Effective Date, by and between [company name], a [state] [entity type] (the “Company”), and [consultant name] (“Consultant”).

1. SCOPE OF SERVICES.

[IC-friendly provision: During the term of this Agreement, as defined in Section 4, Consultant will provide consulting services to the Company as described in Exhibit A hereto (the “Services”).]

[Company-friendly provision: During the term of this Agreement, as defined in Section 4, Consultant will provide consulting services to the Company as described in Exhibit A hereto (the “Services”). Satisfactory completion of the Services is required prior to the Company’s obligation to provide the compensation described in Section 2. The Company shall have the sole discretion to determine whether the Services have been completed in a satisfactory manner. In the event that the Company determines, in its reasonable judgment, that the Services completed are not satisfactory, the Company shall communicate the dissatisfaction to the Consultant within a reasonable amount of time of completion of the Services. Consultant shall use Consultant’s best efforts to perform the Services such that the results are satisfactory to the Company.]

2. COMPENSATION.

[IC-friendly provision: As consideration for the Services to be provided by Consultant and other obligations, the Company shall provide Consultant [insert payment terms].]

[Company-friendly provision: As consideration for the Services to be provided by Consultant and other obligations, the Company shall provide Consultant [insert payment terms]. The Company shall have the authority to withhold the compensation described in this Section 2 in the event that the Services are not satisfactory in the sole discretion of the Company, as described in Section 1.]

3. EXPENSES.

*[IC-friendly provision: Consultant is authorized to incur on behalf of the Company any reasonable and necessary expenses *[optional: up to [dollar amount]]* in furtherance of the performance of the Services. Consultant shall maintain a record of all expenses and be entitled to reimbursement at cost by the Company. Company shall reimburse Consultant for expenses*

within [insert time] from the time that Consultant provides Company with a record of such expenses.]

[*Company-friendly provision:* Consultant shall not be authorized to incur on behalf of the Company any expenses and will be responsible for all expenses incurred while performing the Services, except as expressly specified in Exhibit B hereto, unless otherwise agreed to by the Company, which consent shall be evidenced in writing for any expenses in excess of [insert dollar amount]. As a condition to receipt of reimbursement, Consultant shall be required, at the Company's discretion, to submit to the Company reasonable evidence that the amount involved was both reasonable and necessary to the Services provided under this Agreement.]

4. **TERM AND TERMINATION.** Consultant shall serve as a consultant to the Company for a period commencing on the Effective Date and terminating on [*Option 1:* the date Consultant completes the provision of the Services to the Company under this Agreement] [*Option 2:* [specify date].]

[*Optional:* Notwithstanding the above, either party may terminate this Agreement at any time upon [number of days, e.g. 10] business days written notice.]

Should either party default in the performance of this Agreement or materially breach any of its obligations under this Agreement, [*Company-friendly provision:* including but not limited to Consultant's obligations under the Confidential Information and Invention Assignment Agreement described in Section 9, and set forth in Exhibit C hereto,] the non-breaching party may terminate this Agreement immediately if the breaching party fails to cure the breach within three (3) business days after having received written notice by the non-breaching party of the breach or default.

[*Company-friendly provision:* In the event that Company terminates this agreement for Cause, Company shall be relieved of all obligation to provide compensation to Consultant, as described in Section 2, including for any Services already performed. As used in this Section, "Cause" shall mean a material breach of this Agreement, conviction of a felony or other crime involving moral turpitude, or poor performance, as determined in the sole discretion of the Company.]

5. **INDEPENDENT CONTRACTOR.** Consultant's relationship with the Company will be that of an independent contractor and not that of an employee. Nothing contained in this Agreement, nor in any exhibits incorporated herein, shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship.

6. **METHOD OF PROVISION OF SERVICES.** Consultant shall be solely responsible for determining the method, details and means of performing the Services. [*Optional:* Consultant may, at Consultant's own expense, employ or engage the services of such employees, subcontractors, partners or agents, as Consultant deems necessary to perform the Services (collectively, the "Assistants"). The Assistants are not and shall not be employees of the Company, and Consultant shall be wholly responsible for the professional performance of the Services by the Assistants such that the results are satisfactory to the Company. Consultant shall expressly advise the Assistants of the terms of this Agreement, and shall require each Assistant

to execute and deliver to the Company a Confidential Information and Invention Assignment Agreement substantially in the form attached to this Agreement as Exhibit C.]

(a) **NO AUTHORITY TO BIND COMPANY.** Consultant acknowledges and agrees that Consultant [and its Assistants] have no authority to enter into contracts that bind the Company or create obligations on the part of the Company without the prior written authorization of the Company.

(b) **NO BENEFITS.** Consultant acknowledges and agrees that Consultant [and its Assistants] shall not be eligible for any Company employee benefits and, to the extent Consultant otherwise would be eligible for any Company employee benefits but for the express terms of this Agreement, Consultant hereby expressly declines to participate in such Company employee benefits.

(c) **WITHHOLDING; INDEMNIFICATION.** Consultant shall have full responsibility for applicable withholding taxes for all compensation paid to Consultant [or its Assistants] under this Agreement, and for compliance with all applicable labor and employment requirements with respect to Consultant's self-employment, sole proprietorship or other form of business organization, [and with respect to the Assistants,] including state worker's compensation insurance coverage requirements and any U.S. immigration visa requirements. Consultant agrees to indemnify, defend and hold the Company harmless from any liability for, or assessment of, any claims or penalties with respect to such withholding taxes, labor or employment requirements, including any liability for, or assessment of, withholding taxes imposed on the Company by the relevant taxing authorities with respect to any compensation paid to Consultant [or its Assistants].

7. **CONSULTING OR OTHER SERVICES FOR COMPETITORS.**

[IC-friendly provision: no provision or provision expressly authorizing Consultant to perform services for competitors].

[Company-friendly provision: Consultant represents and warrants that Consultant does not presently perform or intend to perform, during the term of the Agreement, consulting or other services for, or engage in or intend to engage in an employment relationship with, companies whose businesses or proposed businesses in any way involve products or services which would be competitive with the Company's products or services, or those products or services proposed or in development by the Company during the term of the Agreement specified in Section 4 (except for those companies, if any, listed on Exhibit D hereto). If, however, Consultant decides to do so, Consultant agrees that, in advance of accepting such work, Consultant will promptly notify the Company in writing, specifying the organization with which Consultant proposes to consult, provide services, or become employed by and to provide information sufficient to allow the Company to determine if such work would conflict with the terms of this Agreement (including the terms of the Confidential Information and Invention Assignment Agreement described in Section 9, and set forth in Exhibit C hereto), the interests of the Company, or further services which the Company might request of Consultant. If the Company determines that such work conflicts with the terms of this Agreement, the Company reserves the right to terminate this

Agreement immediately. In no event shall any of the Services be performed for the Company at the facilities of a third party or using the resources of a third party.]

8. **QUALIFICATIONS/REPRESENTATIONS.**

[*IC-friendly provision: no provision*].

[*Company-friendly provision: Consultant represents that Consultant is duly licensed (as applicable) and has the qualifications, the experience, and the ability to properly perform the Services.*]

9. **INTELLECTUAL PROPERTY.**

[*IC-friendly provision: No intellectual property rights are conveyed by either party under this Agreement, except as follows: [describe ownership of intellectual property and licenses].*]

[*Company-friendly provision 1: Any work product produced by Consultant pursuant to this Agreement shall be deemed a “work made for hire”, and any intellectual property or other work product shall be owned exclusively by the Company.*]

[*Compromise provision: Any work product produced by Consultant pursuant to this Agreement shall be deemed a “work made for hire”, and any intellectual property or other work product shall be owned exclusively by the Company. Consultant shall retain a non-exclusive, perpetual, worldwide, fully paid up, and royalty free license to use and modify all, or portions of, final deliverables and other work product produced under this Agreement [optional: for promotional purposes].*]

[*Company-friendly provision 2: Consultant shall sign, or has signed, a Confidential Information and Invention Assignment Agreement in the form set forth as Exhibit C hereto, on or before the date Consultant begins providing the Services.*]

10. **CONFLICTS WITH THIS AGREEMENT.**

[*IC-friendly provision: no provision*].

[*Company-friendly provision: Consultant represents and warrants that Consultant is not under any pre-existing obligation in conflict or in any way inconsistent with the provisions of this Agreement. Consultant represents and warrants that Consultant’s performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary information acquired by Consultant in confidence or in trust prior to commencement of this Agreement. Consultant warrants that Consultant has the right to disclose and/or use all ideas, processes, techniques and other information, if any, which Consultant has gained from third parties, and which Consultant discloses to the Company or uses in the course of performance of this Agreement, without liability to such third parties. Notwithstanding the foregoing, Consultant agrees that Consultant shall not bundle with or incorporate into any deliveries provided to the Company herewith any third party products, ideas, processes, or other techniques, without the express, written prior approval of the Company. Consultant represents and warrants that Consultant has not granted and will not grant any rights or licenses to any intellectual property or*

technology that would conflict with Consultant's obligations under this Agreement. Consultant will not knowingly infringe upon any copyright, patent, trade secret or other property right of any former client, employer or third party in the performance of the Services.]

11. **MISCELLANEOUS.**

(a) **INDEMNIFICATION.**

[IC-friendly provision: Company agrees to defend, indemnify and hold Consultant and its agents, harmless from and against any and all liability, losses, claims, damages, expenses and legal fees, to the extent that the same is caused by the Company's negligent or intentional acts, errors, or omissions or those of their agents].

[Company-friendly provision: Consultant shall defend, indemnify, and hold harmless, the Company and its respective directors, officers, employees, agents, parent, subsidiaries, and other affiliates, from and against any and all liabilities, damages, losses, costs and expenses, including the reasonable fees of attorneys and other professional third parties (collectively, "Losses"), arising out of or resulting from any and all third-party suits, claims, actions, proceedings or demands ("Claims") to the fullest extent permitted by law, including Losses and Claims based upon: (a) the negligence, recklessness or wrongful intentional acts or omissions of Consultant, and its respective directors, officers, employees, agents, parent, subsidiaries, and other affiliates in connection with performance of its obligations or exercise of its rights under this Agreement; (b) any breach of any representation, warranty, covenant, or agreement made by Consultant under this Agreement; (c) any claims for bodily injury or property damage brought by employees or agents of Consultant. It is understood that the intent of this provision is to absolve and protect the Company from any and all Losses caused by or connected with the work of Consultant under this Agreement.]

[Compromise provision: no provision or mutual indemnification].

(b) **DISPUTE RESOLUTION.**

[Option 1: The parties agree to attempt to resolve any dispute, claim or controversy arising out of or relating to this Agreement by mediation. The parties further agree that their respective good faith participation in mediation is a condition precedent to pursuing any other available legal or equitable remedy, including litigation, arbitration or other dispute resolution procedures.]

[Option 2: The parties agree to resolve any dispute, claim or controversy arising out of or relating to this Agreement as follows: first, the parties agree to attempt in good faith to resolve the dispute through informal resolution. Second, if the dispute is not resolved through informal resolution, the parties agree to attempt in good faith to resolve the dispute through mediation administered by the American Arbitration Association under its Commercial Mediation Procedures, the costs of which shall be divided equally between the parties. Third, if the dispute is not resolved through informal resolution and mediation, the parties agree to participate in binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The parties agree that, in the event of arbitration (or in the event of a lawsuit if this arbitration clause is deemed invalid or does not apply to a given dispute) the prevailing party shall be entitled to costs and fees (including reasonable attorneys' fees). Either Party may bring a

lawsuit solely for injunctive relief without first engaging in the dispute resolution process described in this Section 11(b).]

(c) **GOVERNING LAW.** The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of [state name], without giving effect to principles of conflicts of law.

(d) **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings and agreements, whether oral or written, between them relating to the subject matter hereof.

(e) **AMENDMENTS AND WAIVERS.** No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance.

(f) **SUCCESSORS AND ASSIGNS.** Except as otherwise provided in this Agreement, this Agreement, and the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of their respective successors, assigns, heirs, executors, administrators and legal representatives.

[*Company-friendly provision:* The Company may assign any of its rights and obligations under this Agreement. No other party to this Agreement may assign, whether voluntarily or by operation of law, any of its rights and obligations under this Agreement, except with the prior written consent of the Company.]

(g) **NOTICES.** Any notice, demand or request required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email, or forty eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address as set forth on the signature page, as subsequently modified by written notice, or if no address is specified on the signature page, at the most recent address set forth in the Company's books and records.

(h) **SEVERABILITY.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(i) **CONSTRUCTION.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

(j) **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement.

(k) **ELECTRONIC DELIVERY.** The Company may, in its sole discretion, decide to deliver any documents related to this Agreement or any notices required by applicable law or the Company's Certificate of Incorporation or Bylaws by email or any other electronic means. Consultant hereby consents to receive such documents and notices by such electronic delivery and agrees to participate through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

(l) **[OPTIONAL: TIME IS OF THE ESSENCE.** Time is of the essence with respect to all provisions within this Agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.]

Signature Page Follows.

The parties have executed this Agreement as of the Effective Date first written above.

[COMPANY NAME]:

(Signature)

Name: [name of agent]

Title: [title of agent]

Address:

[Insert Address]

Email:

[Insert Email]

[CONSULTANT NAME]:

(Signature)

Address:

[Insert Address]

Email:

[Insert Email]