

[LOGO]

# **INDEPENDENT AGENT AGREEMENT**

SAMPLE

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**INDEPENDENT AGENT AGREEMENT**

This Independent Agent Agreement (hereinafter referred to as the “Agreement”) is made by and between the following parties (hereinafter referred to collectively as “the parties”):

1. Client., (hereinafter referred to as “the Company”), a business entity; and
2. \_\_\_\_\_, (hereinafter referred to as “Agent”), an individual

Each of the parties enters into this Agreement on behalf of themselves, their representatives, heirs, executors, administrators, trustees, predecessors, successors, affiliates, subrogors, subrogees, lessees, lessors, grantees, assignees, assignors, subsidiaries, parent corporations, agents, employees, servants, officers, directors, members, shareholders, owners, alter egos, attorneys, general partners, limited partners, and representatives.

**1. Recitals**

- 1.01 WHEREAS, Company desires to retain Agent as an independent contractor to perform services for the Company on terms set forth fully herein, and;
- 1.02 WHEREAS, Agent is willing to perform such services;
- 1.03 THEREFORE, the parties have mutually agreed to the following terms and conditions:

**2. Services, Compensation and Agent Warranties****2.01 Services**

Agent agrees to perform for the Company the services (“Services”) described in Exhibit A, attached hereto.

**2.02 Compensation**

The Company agrees to pay Agent the compensation set forth in Exhibit A for the performance of the Services.

**2.03 Agent’s Warranties; Documentation and Reports**

Agent represents and warrants to Company that Agent has the expertise and resources necessary to perform and deliver the Services in accordance with this Agreement. Agent agrees to perform and deliver the Services using good faith, honest, and best efforts, conscientiously, and in a manner consistent with recognized practices and standards of the trade and any special instructions issued by Company. Agent agrees to devote whatever time is reasonably necessary to perform and deliver the Services in a timely manner, in accordance with any milestones, deadlines or other time requirements set forth on Exhibit A, and in compliance with the Code of Ethics set forth on Exhibit D. Agent agrees to submit to Company invoices and other documentation or reports if reasonably requested by Company to substantiate Agent’s performance of Services, as a condition to Company’s payment obligation. Company may withhold payment of fees until any dispute regarding the acceptability of Agent’s performance is resolved.

**3. Ownership**

3.01 Exclusive Ownership

Agent agrees that Company shall be the sole and exclusive owner of all patents, copyrights, trade secrets and other intellectual property or proprietary rights created by Agent, individually, or jointly with others, in connection with this Agreement, including all rights in and to the documentation in its finished form and draft stages, and the “soft” copy form of the documentation in its finished form and draft stages which Agent agrees to deliver to Company, on Company’s request, on a computer diskette in Microsoft Word (collectively “Proprietary Rights”). Any works created by Agent in the course of discharging his responsibilities under this agreement shall be construed as a “work for hire” for the benefit of the company.

3.02 Assignment and Transfer; Right to Execute Documents

If any instruments of assignment or transfers are necessary to vest sole ownership of any Proprietary Rights in Company, Agent hereby assigns and transfers, and agrees to assign and transfer to Company or Company’s nominees, successors or assigns, all of Agent’s right, title and interest in and to any and all Proprietary Rights. Agent agrees to execute, deliver or record any additional documents as Company may reasonably request to transfer, quitclaim or confirm sole ownership of all right, title and interest in and to the Proprietary Rights in or to Company or Company’s nominees, successors or assigns. If a work created by Agent in connection with this Agreement could qualify as a “work made for hire” under United States copyright laws, then Agent and Company hereby agree that the work is intended as and shall be a “work made for hire,” and Company shall be considered the “author” thereof for copyright purposes. If for any reason Company is unable to secure Agent’s signature on any document necessary to effectuate the purposes or intents of section 3.02 above, Agent hereby irrevocably designates and appoints Company and each of its duly authorized officers, as Agent’s agent and attorney-in-fact to act for and in Agent’s behalf and stead to execute and file any such document with the same force and effect as if executed and delivered by Agent.

3.03 Free Title

Agent warrants that all Proprietary Rights when acquired by Company and all deliverables when delivered to Company: (i) shall be free and clear of all liens, claims, or rights of others; (ii) shall not be the subject of or involved in any pending, or to Agent’s knowledge, threatened, controversy, dispute, claim, settlement, arbitration or litigation; and (iii) shall not infringe or violate any patents, copyrights, trademarks, service marks, trade secrets, or other proprietary rights of any person or entity.

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**4. Reports**

Agent agrees that it will from time to time during the term of the Agreement or any extension thereof keep the Company advised as to the Agent's progress in performing the Services hereunder and that Agent will, as requested by the Company, make oral or written presentations thereto. It is understood that the time required in the preparation of such presentations shall be considered time devoted to the performance of Agent's Services.

**5. Term, Termination, and Effect Thereof****5.01 Term and Termination**

This Agreement will commence on the last dated signature, below, and will continue until final completion of the Services or termination as provided herein. Company shall have the right to terminate this Agreement immediately upon the occurrence of any of the following:

**5.01.1 *Breach***

Agent's breach, noncompliance, nonperformance, incomplete or unsatisfactory performance, neglect, refusal, or delay with respect to any provision of this Agreement, unless the matter is cured to Company's satisfaction within three (3) business days after Company gives notice of said noncompliance, default, etc. to Agent;

**5.01.2 *Dissolution or Bankruptcy***

Agent's voluntary or involuntary dissolution, termination of existence or cessation of active business; Agent's general assignment for the benefit of creditors, Agent's inability to pay Agent's debts as they become due, Agent's commencement or suffering any type of bankruptcy or creditor/debtor protection proceedings, petitions, rights or remedies under state or federal bankruptcy or other laws, or Agent's suffering of any appointment of a receiver or trustee for a substantial portion of Agent's assets; or

**5.01.3 *With or Without Cause***

Company's decision to terminate the Agreement, with or without cause, provided that Agent is given at least 30 working hours prior notice of the termination.

**5.02 Delivery of Work; Transition; Return of Company Property**

Upon any termination of this Agreement, and subject to Company's request and instruction, Agent agrees to deliver all work-in-progress to Company and provide Company services necessary to facilitate a smooth and minimally disruptive transition of Company's affairs to another person or entity. Upon any termination of this Agreement, Agent agrees to immediately stop using and return to Company all property belonging to Company that Agent has in Agent's possession or control.



**5.03 No Prejudice**

Any termination of this Agreement shall not prejudice any remedy that a party may have under this Agreement or at law or in equity. Company agrees to pay, within fifteen (15) days after the termination date, all amounts owing to Agent for services completed prior to the date of termination and related authorized expenses, if any, in accordance with the provisions of section 2 (Services, Compensation and Agent Warranties) hereof.

**5.04 Survival**

The provisions of sections 3 and 5-31, and the rights and obligations of the parties thereunder shall survive any termination of this Agreement. Agent's representations and warranties shall survive acceptance of and payment for Services and any termination of this Agreement.

**6. Assignment**

Neither this Agreement nor any right hereunder or interest herein may be assigned or transferred by Agent without the express written consent of the Company.

**7. Independent Agent is Independent Agent**

Agent is engaged as an independent agent, not as an employee. Company has the right to direct Agent as to the final results of the Services, but does not have the right to direct or control Agent as to details of when, where and how Agent performs the Services. Agent acknowledges and accepts responsibility for payment of all federal, state and local income taxes, estimated income taxes, self-employment taxes and other taxes related to the fees paid Agent under this Agreement, and agrees to pay all of said taxes in a complete and timely fashion.

**8. Disputes to be Arbitrated Rather Than Heard by Court or Jury****8.01 Mandatory Mediation**

Before invoking the dispute resolution mechanism set forth below in this section, a party shall serve on the other party to the Agreement (a) written notice of the claim, specifying the exact amount claimed and the provision of the Agreement or other authority for the claim; and (b) a copy of all supporting documents. Within thirty (30) business days after service, the responding party shall serve on the serving party (a) a written response, setting out its position and specifying the contract or other provisions relied on; and (b) a copy of all supporting documents. Within fifteen business days after service of the response, the parties shall meet at Company's office to discuss resolution of the claim. The written claim notice and response and the documents produced, but not the subsequent discussion, shall be admissible in any subsequent proceeding. The parties shall, in good faith, use their best efforts to resolve any issues which gave rise to the meeting at the meeting, with the goal of successfully completing this Agreement as originally contemplated. After the meeting, should a resolution not be achieved, either party may invoke the dispute resolution procedure set forth below.

**8.02 Agreement to Arbitrate; Disputes Covered by Arbitration**

In exchange for the benefits of the speedy, economical and impartial dispute resolution procedure of arbitration, the Company and Agent forego their right to resolution of disputes in a court of law by a judge or jury, pursuant to the Federal Arbitration Act and/or California Code of Civil Procedure §§1281 *et seq.* Any controversy or claim arising out of or in any way related to Agent's relationship with the Company or its termination, and otherwise cognizable in a court of law, shall be submitted to final and binding arbitration. This obligation includes, but is not limited to any contractual, common law, tort or statutory claims (such as discrimination claims under either Federal or State laws), and claims against individual officers, directors, managers, supervisors, Agents and agents of the Company, in their capacity as such, as well as claims against the Company.

**8.03 Right to Injunctive Relief**

Either party may, without waiving arbitration rights and duties under this Agreement, seek preliminary injunctive relief (including temporary restraining orders) or other provisional relief from a court upon the same basis and showing as would other litigants, together with a showing that any potential arbitration award would be rendered in effectual without such provisional relief. In the case of a dispute involving the enforcement of §§12-13 of this Agreement, it is hereby stipulated and agreed by and between the parties hereto that the damages to the non-breaching party would be so severe, imminent and impossible to accurately calculate that mere monetary damages would be insufficient, and that said non-breaching party would be entitled to an immediate injunction against the breaching party without the need to post any bond or to prove anything further, said damages being stipulated hereto.

**8.04 Right of Access to Governmental Agencies**

While the Company and Agent agree to arbitrate the merits of all unresolved claims, Agent still has the right to file complaints or charges with, or cooperate with, appropriate governmental agencies.

**8.05 Statutes of Limitations, Scope of Remedies, and Substantial Law**

Statutes of limitations, scope of remedies, and substantial law (including any requirement for prior exhaustion of administrative agency relief) shall be the same as would be applicable were any action to be brought in Court. Any claim or demand for arbitration must be served upon the responding party within ninety (90) days of the completion of the filing of all initial pleadings and responses thereto, and must fairly put the opposing parties on notice as to the factual and legal basis for the claim(s) as adjudged by California case law interpreting notice pleading requirements.

**8.06 Administration of Arbitration**

The arbitration shall be held in the County of Orange, and administered by JAMS/Endispute in accordance with the then-existing JAMS/Endispute Arbitration Rules and Procedures for Business Disputes. Copies of such rules are available upon request from the Company. If for any reason JAMS/Endispute is unwilling or unable to handle the dispute, then the dispute shall be processed pursuant to California Code of Civil Procedure §§ 1282-1284.2.