

## INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (this “*Agreement*”) is made as of \_\_\_\_\_, 2012 (the “*Effective Date*”), between \_\_\_\_\_, a California limited liability company, having a principal place of business at \_\_\_\_\_ (the “*Company*”), and \_\_\_\_\_, having a principal place of business at (“*Contractor*”).

### BACKGROUND

The Company desires to retain Contractor, and Contractor desires to be engaged by the Company, to perform certain services pursuant to the terms and conditions of this Agreement.

### TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing and the terms, conditions and covenants hereinafter set forth, the Company and Contractor agree as follows:

1. **DEFINITIONS.** Capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

(a) “**Company Documents and Materials**” means documents or other media, whether in tangible or intangible form, that contain or embody Proprietary Information or any other information concerning the business, operations or plans of the Company, whether such documents or media have been prepared by Contractor or by others. Company Documents and Materials include, without limitation, blueprints, drawings, photographs, charts, graphs, notebooks, tests, test results, experiments, customer lists, computer disks, tapes or printouts, sound recordings and other printed, electronic, typewritten or handwritten documents or information, sample products, prototypes and models.

(b) “**Inventions**” means, without limitation, all software programs or subroutines, source or object code, algorithms, improvements, inventions, works of authorship, trade secrets, technology, designs, formulas, ideas, processes, techniques, know-how and data, whether or not patentable or copyrightable, made or discovered or conceived or reduced to practice or developed by Contractor, either alone or jointly with others.

(c) “**Proprietary Information**” means information that was or will be developed, created, or discovered by or on behalf of the Company, or which became or will become known to, or was or is conveyed to the Company, which has commercial value in the Company’s business, whether or not patentable or copyrightable, including, without limitation, information about software programs and subroutines, source and object code, algorithms, trade secrets, designs, technology, know-how, processes, data, ideas, techniques, inventions, works of authorship, formulae, business and product development plans, customer lists, terms of compensation and performance levels of the Company’s employees and Contractors, the Company’s customers and other information concerning the Company’s actual or anticipated business, research or development, or which is received in confidence by or for the Company from any other person or entity.

(d) “**Services**” means the services to be performed by Contractor on behalf of the Company described on Exhibit A attached hereto.

2. **SERVICES.** The Company hereby engages Contractor, and Contractor accepts such engagement, to perform the Services. Contractor shall provide the Services at such specific times and at such particular locations as Contractor and the Company mutually determine from time to time.

3. **TERM.** The term of this Agreement shall commence on the Effective Date and terminate on the date twelve (12) months thereafter. Notwithstanding the foregoing, either party may terminate this Agreement for without cause upon not less than thirty (30) days’ notice to the other and may terminate this Agreement immediately upon occurrence of any of the following events: (a) the breach of this Agreement by the other party, which breach is not cured within ten (10) days after written notice of such breach; (b) the dissolution, voluntary or involuntary bankruptcy of either party, or assignment by either party of all or substantially all of its assets for the benefit of creditors; or (c) embezzlement, fraud or deceit in the performance of the other party’s obligations hereunder. Notwithstanding the termination of this Agreement, any liability or obligation of either party which may have accrued prior to such termination shall continue in full force and effect, including but not limited to the rights and obligations of the parties hereto under Sections 6 through 13, 15 and 17 of this Agreement.

4. **COMPENSATION.** In consideration of Contractors’ performance of the Services, the Company shall pay Contractor at a rate of \$\_\_\_\_\_ per hour. Contractor shall submit an invoice to Company, consistent with the compensation terms of this Agreement, on or before the last day of each month. Company agrees to remit payment for invoiced fees within ten (10) days of its receipt of such invoice. Contractor acknowledges and agrees that it is responsible for all federal, state and local taxes as well as any other financial or reporting obligation. Company will provide Contractor with a 1099 IRS tax statement at the end of each calendar year.

5. **EXPENSES.** The Company shall have no obligation to reimburse Contractor for expenses unless approved in advance by the Company.

6. **CONFIDENTIALITY OF PROPRIETARY INFORMATION.**

(a) **Nature of Information.** Contractor understands that the Company possesses and will possess Proprietary Information which is important to its business. Contractor understands that Contractor’s engagement creates a relationship of confidence and trust between the Company and Contractor with respect to Proprietary Information.

(b) **Property of the Company.** Contractor acknowledges and agrees that all Company Documents and Materials, Proprietary Information and all patents, patent rights, copyrights, trade secret rights, trademark rights and other rights (including, without limitation, intellectual property rights) anywhere in the world in connection therewith is and shall be the sole property of the Company. Contractor hereby assigns to the Company any and all rights, title and interest Contractor may have or acquire in the Proprietary Information or any Company Documents and Materials.

(c) **Confidentiality.** At all times, both during the term of Contractor's engagement by the Company and after Contractor's termination, Contractor shall keep in confidence and trust and shall not use or disclose any Proprietary Information or anything relating to it without the prior written consent of the President or other duly designated officer of the Company, except as may be necessary in the ordinary course of performing Contractor's duties for the Company.

(d) **Compelled Disclosure.** In the event that Contractor is requested in any proceeding to disclose any Proprietary Information, Contractor shall give the Company prompt notice of such request so that the Company may seek an appropriate protective order. If, in the absence of a protective order, Contractor is nonetheless compelled by any court or tribunal of competent jurisdiction to disclose Proprietary Information, Contractor may disclose such information without liability hereunder; provided, however, that Contractor gives the Company notice of the Proprietary Information to be disclosed as far in advance of its disclosure as is practicable and uses Contractor's best efforts to obtain assurances that confidential treatment will be accorded to such Proprietary Information.

(e) **Records.** Contractor agrees to make and maintain adequate and current written records, in a form specified by the Company, of all Inventions, trade secrets and works of authorship assigned or to be assigned to the Company pursuant to this Agreement.

(f) **Handling of the Company Documents and Materials.** Contractor agrees that during Contractor's engagement by the Company, Contractor shall not remove any Company Documents and Materials from the business premises of the Company or deliver any Company Documents and Materials to any person or entity outside the Company, except as Contractor may be required to do in connection with performing the Services. Contractor further agrees that, immediately upon the termination of Contractor's engagement by Contractor or by the Company for any reason, or during Contractor's engagement if so requested by the Company, Contractor shall return all Company Documents and Materials, apparatus, equipment and other physical property, or any reproduction of such property, excepting only (i) Contractor's personal copies of personnel records and records relating to Contractor's compensation; and (ii) Contractor's copy of this Agreement.

## 7. INVENTIONS.

(a) **Disclosure.** Contractor shall promptly disclose in writing to the Vice President, Creative Services or to such person designated by the Company all Inventions made during the term of Contractor's engagement with the Company related to the Services. Contractor shall also disclose to the Vice President, Creative Services or such designee all Inventions made, discovered, conceived, reduced to practice or developed by Contractor either alone or jointly with others, within six (6) months after the termination of Contractor's engagement with the Company which resulted, in whole or in part, from Contractor's prior engagement with the Company and are related to the Services. Such disclosures shall be received by the Company in confidence, to the extent such Inventions are not assigned to the Company pursuant to subsection (b) below, and do not extend the assignments made in such subsection.

**(b) Assignment of Inventions to the Company.** Contractor agrees that all Inventions which Contractor makes, discovers, conceives, reduces to practice or develops (in whole or in part, either alone or jointly with others) during Contractor's engagement related to the Services, including, but not limited to, conceptions or ideas derived prior to Contractor's engagement but related to the Services and reduced to practice or developed (in whole or in part, either alone or jointly with others) during Contractor's engagement with the Company, shall be the sole property of the Company to the maximum extent permitted by law and Contractor agrees to assign and hereby does assign to the Company all right title and interest to the Inventions.

**(c) Works Made for Hire.** Contractor agrees that the Company shall be the sole owner of all patents, patent rights, copyrights, trade secret rights, trademark rights and all other intellectual property or other rights in connection with Inventions related to the Services. Contractor further acknowledges and agrees that such Inventions related to the Services, including, without limitation, any computer programs, programming documentation and other works of authorship, are "works made for hire" for purposes of the Company's rights under copyright laws. Contractor hereby assigns to the Company any and all rights, title and interest Contractor may have or acquire in such Inventions. If in the course of Contractor's engagement with the Company, Contractor incorporates into a Company product, process or a machine a prior Invention or improvement not related to the Services that is owned by Contractor or in which Contractor has an interest, the Company is hereby granted and shall have a non-exclusive, royalty-free, irrevocable, perpetual, sub licensable, worldwide license to make, have made, modify, use, market, sell and distribute such prior Invention as part of or in connection with such product process or machine. If in the course of Contractor's engagement with the Company, Contractor incorporates into a Company product, process or a machine a prior Invention or improvement related to the Services owned by Contractor or in which Contractor has an interest, Contractor agrees to assign and here by does assign all rights and interest in the Invention to the Company.

**(d) Cooperation.** Contractor agrees to perform, during and after Contractor's engagement, all acts deemed necessary or desirable by the Company to permit and assist it, at the Company's expense, in further evidencing and perfecting the assignments made to the Company under this Agreement and in obtaining, maintaining, defending and enforcing patents, patent rights, copyrights, trademark rights, trade secret rights or any other rights in connection with such Inventions and improvements related to the Services in any and all countries. Such acts may include, without limitation, execution of documents and assistance or cooperation in legal proceedings. Contractor hereby irrevocably designates and appoints the Company and its duly authorized officers and agents, as Contractor's agents and attorney-in-fact, coupled with an interest, to act for and on Contractor's behalf and in Contractor's place and stead, to execute and file any documents, applications or related findings and to do all other lawfully permitted acts to further the purposes set forth above in this Section, including, without limitation, the perfection of assignment and the prosecution and issuance of patents, patent applications, copyright applications and registrations, trademark applications and registrations or other rights in connection with such Inventions and improvements related to the Services with the same legal force and effect as if executed by Contractor.

(e) **Assignment or Waiver of Moral Rights.** Any assignment of copyright hereunder (and any ownership of a copyright as a work made for hire) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as “Moral Rights” (collectively, “*Moral Rights*”). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the law in the various countries where Moral Rights exist, Contractor hereby waives such Moral Rights and consents to any action of the Company that would violate such Moral Rights in the absence of such consent.

(f) **Holdover Assignment.**

(i) Contractor agrees to, after the termination of Contractor’s engagement with the Company for any reason, (1) disclose immediately to the Company all Inventions related to the Services, patentable or not; (2) assist, at the Company’s expense, such applications for United States patents and foreign patents covering such Inventions related to the Services as the Company may request; (3) assign to the Company without further compensation to Contractor the entire title and rights to all such Inventions and applications related to the Services that Contractor may have, and (4) execute, acknowledge, deliver, or act as otherwise necessary at the request of the Company all such papers, including but not limited to patent applications, assignments, power of attorney, as necessary to secure the Company the full rights to such Inventions and applications related to the Services.

(ii) The Inventions related to the Services which shall come under this Section 7(f) shall include all Inventions related to the Services that (1) Contractor conceives, reduces to practice, or otherwise makes or develops, either solely or jointly with others, within one year after the termination of this Agreement; and (2) are in any way based on any trade secret or confidential or proprietary information that Contractor learned during his engagement with the Company; or result from any work performed by Contractor for the Company under this Agreement; or are in any way related to the subject matter or activities of Contractor’s engagement with the Company.

**8. NON-SOLICITATION OR HIRE OF THE COMPANY EMPLOYEES.** During the term of this Agreement and for one (1) year thereafter, Contractor shall not encourage or solicit any employee of the Company to leave the Company for any reason or to accept employment with Contractor or any other entity. As part of this restriction, Contractor shall not (a) interview or provide any input to any third party regarding any such employee during such time period, or (b) retain or hire in any capacity, either individually or for any person or entity by which Contractor may be engaged or with which Contractor may be affiliated, any person who is or was employed by the Company at any time during the term of this Agreement and six (6) months after the termination of such engagement.

**9. NON-SOLICITATION OF NON-EMPLOYEES.** During the term of this Agreement and for one (1) year thereafter, Contractor shall not interfere with or attempt to impair the relationship between the Company and any of its non-employee Contractors and advisors, nor shall Contractor attempt, directly or indirectly, to solicit, entice, hire or otherwise induce any non-employee Contractor or advisor of the Company to terminate association with the Company.

**10. INDEPENDENT CONTRACTOR.** The Company and Contractor mutually understand and agree that Contractor shall be at all times acting and performing as an Independent contractor. Nothing in this Agreement is intended to create an employer/employee relationship or a joint venture relationship between the parties. The parties agree that Contractor is not eligible for any compensation, fringe benefits, pension, workers' compensation, sickness or health insurance benefits, or other similar benefits accorded employees of the Company. The parties agree that the Company will not withhold any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement of any governmental body on behalf of Contractor. Contractor acknowledges and agrees that the Company has no obligation under local, state, or federal laws regarding Contractor and that the total commitment and liability of the Company in regard to any arrangement with, or work performed by, Contractor hereunder is to pay the fees and expenses pursuant to the provisions hereof. Contractor shall indemnify and hold the Company harmless from any and all loss, damage, claims, payments, or liability arising with respect to any such payment, withholdings, and benefits, if any. Nothing in this Agreement is intended to allow the Company to exercise control or direction over the manner or method by which Contractor performs the Services under the terms of Contractor's engagement by the Company.

**11. NO AUTHORITY TO BIND.** Contractor shall have no power or authority to execute any agreements or contracts for or on behalf of the Company nor to bind the Company in any other manner.

**12. INDEMNIFICATION.** Contractor shall save, indemnify, defend and hold the Company harmless from any liability, claim, loss, damage, or expenses, including, without limitation, reasonable attorney fees, arising from Contractor's acts or omissions in the course of providing the Services.

**13. INJUNCTIVE RELIEF.** Contractor acknowledges that breach of any of the provisions of this Agreement could cause the Company irreparable injury for which no adequate remedy at law exists. Accordingly, the Company shall have the right, in addition to any other rights it may have, and by executing this Agreement Contractor hereby consents, to the entry in any court having jurisdiction of a temporary or permanent restraining order or injunction restraining or enjoining Contractor from any violation of this Agreement. Contractor further agrees to waive, and to use Contractor's best efforts to cause Contractor's directors, officers, employees and agents, if any, to waive, any requirement for the securing or posting of any bond in connection with such remedy.

**14. NO ASSIGNMENT.** This Agreement may not be assigned by either party without the written consent of the other party.

**15. SEVERABILITY** Contractor agrees that if one or more provisions of this Agreement are held to be unenforceable under applicable law, such provisions shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

**16. BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding upon, the parties and their respective successors and permitted assigns.

**17. AMENDMENT.** This Agreement may not be amended except by mutual written Agreement of the parties.

**18. NOTICES.** All notices, requests, demands and other communications shall be in writing and shall be deemed to have been duly given or made if delivered by hand, in which case notice will be deemed effective upon receipt, or, if by mail by certified or registered mail, with postage prepaid to the address of such party set forth in the introductory paragraph of this Agreement or to such address directed by a party in writing, in which case notice will be deemed effective upon mailing. The return receipt, the delivery receipt, or the affidavit of messenger will be deemed conclusive but not exclusive evidence of delivery; delivery will also be presumed at such time as delivery is refused by the addressee upon presentation.

**19. ENTIRE AGREEMENT.** This Agreement shall constitute the entire agreement between the parties and supersedes any and all other written or oral agreements between Contractor and the Company with respect to the subject matter of this Agreement.

**20. GOVERNING LAW; CONSENT TO JURISDICTION, WAIVER OF JURY TRIAL.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to its principles of conflicts of laws. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of California and any United States District Court in the State of California for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

**21. COLLECTION COSTS AND ATTORNEYS' FEES.** If a party shall fail to perform an obligation or otherwise breaches one or more of the terms of this Agreement, the other party may recover from the non-performing breaching party all its costs (including actual attorneys' and investigative fees) to enforce the terms of this Agreement.

**22. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

**SIGNATURES ON THE FOLLOWING PAGE**

**IN WITNESS WHEREOF**, the Company and Contractor have made this Agreement effective as of the date first set forth above.

**CONTRACTOR:**

\_\_\_\_\_

**THE COMPANY:**

By: \_

Name

:

Title:



**EXHIBIT A**  
**DESCRIPTION OF SERVICES**