

**INCREDIBLE INSTALLATIONS, LLC –  
INDEPENDENT CONTRACTOR AGREEMENT**

Independent Contractor's Full Legal Name: \_\_\_\_\_  
Principal Business Address: \_\_\_\_\_  
\_\_\_\_\_

Billing/Mailing Address (If Different from Principal Business Address)  
\_\_\_\_\_

Independent Contractor's Primary Tel. No.      Independent Contractor's Fax No. (if any)

\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_      \_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_

This INDEPENDENT CONTRACTOR SERVICE AGREEMENT (“Agreement”) is made and entered into between Incredible Installations, LLC (“Company”) and the independent contractor listed above (“Contractor”) and is voluntarily entered into and effective as of \_\_\_\_\_ (“Effective Date”) and sets forth the master terms and conditions applicable to the rendering of residential and/or commercial installations projects (“Services”) by Contractor as an independent contractor for Company. Company and Contractor are each an individual “Party” and together the “Parties” to this Agreement.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements of the Parties hereinafter set forth, the Parties hereto agree as follows:

**ARTICLE I**

**Term and Termination**

- 1.1 **Term.** The term of this Agreement shall commence on the Effective Date and has no defined termination date. This Agreement will continue from week to week unless terminated by either party. Notwithstanding the above, either party may terminate this Agreement at any time for any reason or no reason at all, by giving the other party written notice as set forth in 1.3 below.
- 1.2 **Event of Default.** This Agreement may be terminated for cause (i.e. for the occurrence of an Event of Default defined in Article XIV by Company immediately upon expiration of the applicable cure period. If Contractor commits an Event of Default of substantially similar nature as determined by Company more than once within a six (6) month period, Company shall have the right to immediately terminate this Agreement without the necessity of providing Contractor notice of right to cure or any other notice under this Agreement. This right shall not be waived if Company permits Contractor to cure such subsequent breach or Event of Default within a reasonable amount of time.
- 1.3 **Termination for Convenience.** Unless otherwise agreed to by the parties in writing and subject to Sections 1.4 and 1.5, the Company may terminate this Agreement for any reason or no reason at all at any time for convenience by written notice to the Contractor at the address notated on the signature page of this Agreement. The Contractor may terminate this Agreement for any reason or no reason at all at any time for convenience by giving three (3) weeks written notice to the Company at the address notated on the signature page of this Agreement.

1.4 **Contractor's Obligations upon Termination.** Upon termination of this Agreement for any reason, Contractor must:

- (a) Complete in a timely manner all Service and/or orders accepted by Contractor prior to the effective date of termination unless instructed by Company to the contrary;
- (b) Pay to Company all sums payable hereunder prior to the effective date of the termination, and pay and perform all obligations which are to continue thereafter under the terms of this Agreement within thirty (30) days after notification of termination;
- (c) Pay to Company any sum that becomes due after termination within thirty (30) days after the date it accrues;
- (d) Deliver to Company all records maintained by Contractor with respect to Services performed and all customer lists that were developed while operating hereunder, which lists are the exclusive property of Company, and thereafter refrain from the use of any such records and customer lists or any information contained therein, or any other information it may have obtained as a result of the business conducted hereunder;
- (e) Return or, if requested by Company, destroy all forms and other materials bearing Company's name and trademarks or its affiliates' customer based documents;
- (f) Cease thereafter to represent in any manner that it is associated or connected with Company or its customers; and
- (g) Return any and all materials provided by Company or its agents used in the performance of Services by Contractor as defined in this Agreement.
- (h) Timely satisfy all obligations under this Agreement still in effect.
- (g) Provide all appropriate lien waivers.

1.5 **Company's Obligations upon Termination.** Upon termination of this Agreement for any reason, Company must:

- (a) Pay all undisputed sums due to Contractor within sixty (60) days notification or after termination;
- (b) Pay all undisputed sums that become due after termination within sixty (60) days after the amount is due; and
- (c) Return to Contractor any and all property of Contractor in Company's possession or control within thirty (30) days after termination.

1.6 **Retainage.** Company may withhold any payments due Contractor for sixty (60) days after termination to offset any amounts which are due or may become due from the Contractor to Company. Under no circumstances shall Company be liable to Contractor for any loss or damage by reason of termination herein.

## **ARTICLE II**

## **Provisions of Services**

- 2.1 **Completion of Services.** Contractor shall, at a minimum, provide and professionally complete all Services described in this Agreement in accordance with and subject to the terms and conditions set forth herein. Contractor shall not offer or provide any service to any Customer, other than those specifically identified in written communication issued by Company while performing Services for the Customer and specific tasks assigned. "Customer" means any consumer who purchased materials, installation, and/or the Services from Company.
- 2.2 **Customer Service.** Contractor shall comply with all of Company's rules, regulations, and policies of customer service and customer relations. Should any complaints arise between a customer and Contractor with respect to any Services performed, Contractor shall comply with Company's customer service policies, and satisfy the customer. Company shall have full rights to investigation, including the right to examine and reproduce any records or files that relate to said complaint. Company's decision shall be final and binding upon Contractor. Contractor will be liable to Company for any returns, refunds, or adjustments made by Company, at any time, in accordance with this Agreement.
- 2.3 Company will arrange for Contractor to install products as described in Exhibit A and Exhibit B to Company Customers in the market area set forth in "Products and Services" and "Market Areas" attached hereto as Exhibit A and Exhibit B, respectively. Contractor acknowledges that it is not the exclusive independent contractor offering Services for Company, and Company makes no guaranty of the amount of business, if any, to be provided to Contractor hereunder.
- 2.4 Contractor shall use, at a minimum, its best efforts to ensure that any and all employees of Contractor comply with Company's principles and standards. Company may use Customer surveys or other methods to measure Contractor's adherence to Company's standards. Contractor must maintain a minimum level of service that is reasonably acceptable to the Company. Notwithstanding the above, nothing contained in this Section 2.4 will be deemed a waiver by the Company of their right to terminate this Agreement pursuant to the terms, provisions, and conditions of Article I.

## **ARTICLE III**

### **Operation of Business by Contractor and/or Subcontractor**

- 3.1 **Compliance with Law.** Contractor is solely responsible for procuring and maintaining all licenses and permits necessary to operate its business hereunder and shall provide Company copies of such licenses and permits. Contractor shall comply with all applicable laws, ordinances, and regulations.
- 3.2 **Liability for Loss.** Contractor shall be fully liable to Company for any and all loss, theft, destruction of, or damage to, any and all monies, funds, property, merchandise, or materials of Company or Company's Customers caused by Contractor's actions while performing work for Customers on behalf of Company, and Contractor shall maintain insurance covering Contractor's liability under this Section.
- 3.3 Contractor warrants and guarantees that all Services performed by Contractor shall be free from defects for a period of one (1) year from completion of said Services by Contractor, or for the period specified in the manufacturer's warranty of materials used, whichever is longer. Furthermore, Contractor warrants and guarantees that all Services performed shall be free from defects in workmanship for a period of one (1) year from completion of said Services by Contractor. If any

claim is made that a defect developed during this warranty period in workmanship or in materials furnished by Contractor, Contractor agrees to immediately remedy said defect without cost to Company or to the customer. If Contractor fails to so remedy said defect, Company may, in its sole discretion, and unless otherwise prohibited by applicable law, have the right to have the defect corrected at Contractor's expense. Contractor agrees to pay Company for such amount and/or hereby authorizes Company to deduct such amount from any sums then due or thereafter becoming due to Contractor from Company.

- 3.4 All Services must be performed free from all liens or claims whatsoever. There shall be no liens placed on Company's property or Customer's property by Contractor, Contractor's employees, materialman or agents of the same as a result of Services performed. Contractor, its employees and agents hereby waive, and Contractor shall cause all necessary parties to waive, all rights to any and all liens arising in connection with any work performed hereunder, and Contractor agrees to indemnify and hold Company, its employees, agents, and customers harmless from and against any and all such liens. This Section shall be a part of this Agreement to the extent permitted by applicable state law. In the event any attachment is levied or lien filed against any property of Company or its customers by reason of any act or omission or any alleged act or omission of Contractor, Contractor's employees, or agents, then Company shall have the right, but not the obligation, to take any and all steps necessary including filing a lawsuit for slander of title to release or discharge such attachments or lien, and Contractor shall be responsible for the payment to Company of all costs and expenses made or incurred by Company by reason thereof, plus interest thereon at the maximum rate permitted by law. Contractor agrees to pay Company for such amount and/or hereby authorizes Company to deduct such amount from any sums then due or thereafter becoming due to Contractor from Company.
- 3.5 Any subcontractor retained by Contractor to perform any Services shall agree to comply with all of the terms and conditions set forth herein, including but not limited to the lien provisions of Section 3.4 and the condition and provisions of Article XI.
- 3.6 Contractor shall execute an Immigration Status form, see Exhibit C and submit to Company at the address listed on the signature page of this Agreement before the commence of each Service or job it accepts.

#### **ARTICLE IV**

##### **Confidentiality and Non-Solicitation**

- 4.1 **Confidential Information.** Contractor acknowledges that performance under this Agreement will provide Contractor and Contractor's personnel access to confidential, proprietary, and trade secret information of Company and Company's Customers' information. "Confidential Information" means information disclosed to, made available to or obtained by Contractor in connection with this Agreement, and all material and reports prepared for Company hereunder, including all information (whether or not specifically labeled or identified as confidential), in any form or medium, that is disclosed to or learned by Contractor in the performance of Services related to this Agreement and that relates to the business, products, services, research, or development of Company or its independent contractors, suppliers, distributors, agents, Customers, clients, representatives or clients of any specific Customer. Confidential Information further includes each of the following: (a) internal business information, (b) compilations of data, analyses, processes, methods, techniques, systems, and research, (c) computer software or technology, and (d) trade secrets, trade dress,

inventions, designs, developments, devices, processes and systems (whether or not patentable or copyrightable and whether or not reduced to practice or fixed in a tangible medium).

- 4.2 **Confidential Business Information.** All information of a business nature relating to, including but not limited to, pricing, sales, promotions, marketing, assets, liabilities, or other business affairs of Company and Company's customers is confidential. Contractor shall not disclose or permit access to any such information to any person, corporation, or entity. Contractor shall cause its officers, employees, and agents to take such action as shall be necessary or advisable, to preserve and protect the confidentiality of such information. This Section shall survive the termination of this Agreement. Contractor agrees that upon any breach of the obligations contained in this Section, Company shall be entitled to seek appropriate equitable relief in addition to whatever remedies it might have at law.
- 4.3 **Confidential Customer Information.** All Customer information (including Customer lists) developed by or acquired by Contractor, its employees, or agents, from the operation of or from records generated as a result of this Agreement during the term of this Agreement or thereafter, are deemed to be exclusively owned by Company. Contractor agrees not to use or permit use of such customer information in any manner except the performance of this Agreement, and agrees not to reproduce, release, or in any way make available or furnish, either directly or indirectly, to any person, firm, corporation, association or organization at any time, any such Customer information which will or may be used to solicit sales or business from such Customers including but not limited to the type of sales or business covered by this Agreement except pursuant to the terms of this Agreement.
- 4.4 **Non-Solicitation.** Contractor shall not use Confidential Information or any other information obtained as a consequence of Contractor's fulfillment of its obligations under this Agreement, for the purpose of soliciting, directly or indirectly, any business from any Customer or prospective Customer of Company or Company's Customers for whom Services have been performed. Contractor shall not use such Confidential Information for the purpose of providing products or services that are the same as, similar to, or competitive with, the Service or other products and services that are sold or provided by any Customer or Client of Company. "Client" means any operating individual or entity that Company enters into an agreement with to perform installation services or provide material or prepares estimations for costs of such services or materials. Contractor shall not divert elsewhere any sales of business which could be transacted by Company. Contractor shall not accumulate or use the names of Company's customers for any purpose whatsoever, except in its performance of Services.

## **ARTICLE V**

### **Employees of Contractor**

- 5.1 Contractor has the full authority to hire, terminate, and supervise its employees and shall determine and be solely responsible for the payment of wages, salaries, and benefits to its employees. However, Contractor agrees to use only those employees who have been cleared through background checks of Company's choosing on Company's projects. If Contractor uses employees

on Company's projects who have not cleared a background check of Company's choosing, Contractor will be in breach of this Agreement.

- 5.2 Contractor is in sole control of its personnel and labor relations. Should any labor dispute arise between Contractor and its employees, subcontractors, agents, or its representatives, which in Company's sole judgment interferes with Company's business, Company may suspend this Agreement, by oral or written notice to Contractor, until Company is satisfied that Contractor's operation is free from involvement in any such dispute. Company shall not be liable to Contractor because of such suspension. Contractor agrees to notify Company of a threatened, impending, or actual labor dispute.

## **ARTICLE VI**

### **Compliance With Federal, State and Local Labor and Employment Laws and Tax Withholding**

- 6.1 Contractor will comply, at its expense, with all Federal, State, and Local labor and employment laws including but not limited to, the Fair Labor Standards Act, state and local minimum wage and overtime laws, the Occupational Safety and Health Act and Occupational Safety and Health Administration (OSHA) regulations, state occupational and safety laws and regulations, Employment Retirement Income Security Act (ERISA), Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Family and Medical Leave Act, Federal Immigration laws, and the Medicare secondary payer (MSP) laws, regulations and CMS directives, and all other laws applicable to its employees, subcontractors and agents.
- 6.2 Contractor will pay all federal, state, and municipal payroll, withholding, social security, Medicare, unemployment, and other taxes, contributions, or premiums which are required by law to be paid and/or withheld by any employer with respect to such employees, subcontractors and agents.
- 6.3 Contractor shall indemnify, defend and hold Company harmless from and against any violation of such acts and laws covered in this Article by Contractor or its employees, subcontractors, agents, or representatives. Should Company pay any sum of money, whether by way of levy, tax, interest, or penalty because of any rule, law, regulation, or ruling that Company shall be responsible for any payments to employees, subcontractors or agents covered hereunder, Contractor agrees promptly upon demand to reimburse Company and/or Contractor hereby authorizes Company to deduct and use a necessary amount from any sums then due or thereafter becoming due to Contractor from Company for any costs and expenses incurred by Company.

## **ARTICLE VII**

### **Accounting and Payment to Contractor**

- 7.1 In the event Contractor collects payment of services from customers, Contractor shall fully comply with and follow Company's policies and procedures regarding the handling of cash, checks, and credit card sales. Contractor shall indemnify Company for all losses incurred by Company due to Contractor's failure to comply.

- 7.2 Contractor shall submit to Company's designated office the then required documentation, which includes the Customer's acceptance of the work. Company shall remit payment to Contractor for Services adequately performed, less any amounts then owed Company by Contractor pursuant to any terms of this Agreement.
- (a) Weekly invoices must be submitted to Company no later than 10am Thursday each week and be submitted via invoice format in Exhibit D, becoming due Friday of the following week.
- (b) In addition to a final lien waiver, see Exhibit E, interim lien waivers will be required for each weekly invoice to be processed for payment, and are due to Company the Monday immediately following your Thursday due invoice submission, see Exhibit D.
- 7.3 In the event any additional monies are advanced by Company to Contractor or made on behalf of Contractor for any reason whatsoever, Contractor shall pay on demand to Company for such amounts and/or Contractor hereby authorizes Company to deduct such amounts from any sums then due or thereafter becoming due to Contractor.
- 7.4 **Payment to Contractor.** Contractor agrees to accept \_\_\_\_ % of the payment Company receives for installation services from Company's customers and affiliates for \_\_\_\_\_  
\_\_\_\_\_ for installation services. Contractor agrees to accept a flat fee of \_\_\_\_\_ for \_\_\_\_\_ installation services.
- 7.5 **Submission for Payment.** Payment process shall begin upon the completion of the Services at Customer's service location for a particular job assignment. Contractor shall have customer sign a customer approval/lien waiver form and then shall sign the customer approval/lien waiver form and submit along with all supporting documentation to Company as a condition of payment processing. Company shall have no obligation to begin payment process until Contractor has complied with the conditions set forth in this section and all other applicable conditions contained within this Agreement.
- 7.6 **Payment Schedule.** With proper receipt of signed customer approval/lien waiver and supporting documentation from Contractor, Company shall process and make payment to Contractor every two (2) weeks for any undisputed charges.

## **ARTICLE VIII**

### **EPA Rule 40 CFR Part 745 (Lead; Renovation, Repair, And Painting Program) And State and Local Requirements**

- 8.1 Contractor agrees to fully comply with EPA Rule 40 CFR Part 745 (Lead; Renovation, Repair, and Painting Program) and any equivalent State or Local environmental laws. Contractor is responsible for operating in full accordance with EPA Rule CFR Part 745 and any equivalent State or Local environmental laws. To fulfill its obligations under the Agreement, Contractor will purchase and maintain at its own expense all required supplies including but not limited to EPA-recognized lead test kits and safety materials necessary to comply with EPA Rule CFR Part 745 and any equivalent State or Local environmental laws.
- 8.2 The EPA and various states require specific documentation for all lead tests performed (regardless of negative or positive results). Contractor agrees to submit to Company completed Lead Test Forms, confirmation of Renovate Right brochure receipt and the RRP Checklist with all measures and/or installation documents prior to closing out a job. Contractor agrees to pay fines, at the discretion of Company, for failure to follow EPA Lead Safe Work Practices as follows:
- a. \$75.00 will be assessed on the next regularly scheduled pay cycle for any completed work order missing RRP Documentation for three (3) business days;
  - b. \$100.00 will be assessed on the next regularly scheduled pay cycle for any completed work order missing RRP Documentation for seven (7) business days;
  - c. Any completed work order that has been submitted and missing RRP Documentation for ten (10) business days will subject the Contractor to the Company's terminating this Agreement;
  - d. Contractor agrees that the above penalty structure will be administered by Regional Manager Approval only and will be done through an internal chargeback.
- 8.3 If Company is assessed a financial penalty for an EPA violation or state or local EPA violation based on work that was assigned to Contractor and/or based on the actions or inactions of Contractor, Contractor agrees it will be responsible for any assessment and will reimburse Company for the entire amount.
- 8.4 In addition to EPA Rule CFR Part 745, Contractor agrees that if it operates in a State that has been authorized by the Federal EPA to administer their own RRP Program, it will fully comply with that State's specific requirements and will be responsible for any assessment by a State Agency and will reimburse Company for the entire amount a State Agency may assess against Company.

## **ARTICLE IX**

### **Taxes**

- 9.1 Contractor is solely responsible for all taxes related to the Services and fulfillment of its obligations to Company under this Agreement. Contractor shall pay, accrue, and/or remit all ad valorem, license, franchise, occupation, income, sales, use, and any other taxes or imposts of every nature or description whatsoever, presently or hereinafter imposed by any government authority upon the operation of Contractor's business, and the Contractor shall file all reports, make all returns, and secure all licenses and permits with respect thereto. Contractor shall know the tax consequences of furnishing and installing products for the company.

## **ARTICLE X**



## **Insurance**

- 10.1 **Liability Insurance.** Contractor, during the term of this Agreement, shall at its sole cost and expense maintain Commercial General Liability Insurance (including coverage for personal injury, property damage and completed operations) and Automobile Liability Insurance with the limits set forth. All such policies shall be written in the form known to the insurance industry as an occurrence policy, which policy shall contain an endorsement whereby the insurer extends the coverage thereunder to the extent necessary to include the contractual liability of Contractor arising by reason of the indemnity provisions of this Agreement, and shall be issued with Company as an additional insured.
- 10.2 **Worker's Compensation.** Contractor will comply, at its expense, with all applicable Worker's Compensation laws and will purchase a policy of workers' compensation insurance regardless of its size and regardless of whether it is covered under the Workers' Compensation Act in order to protect Company from any and all potential Workers' Compensation Claims. Should Company pay any sum of money, whether by way of levy, tax, interest, or penalty because of any rule, law, regulation, or ruling that Company shall be responsible for any payments to employees, subcontractors or agents covered hereunder including but not limited to payments because of Worker's Compensation claims, settlements, reserves, or otherwise, Contractor agrees promptly upon demand to reimburse Company and/or Contractor hereby authorizes Company to deduct and use a necessary amount from any sums then due or thereafter becoming due to Contractor from Company for any costs and expenses incurred by Company in negotiating the settlement or securing an adjudication.
- 10.3 **Endorsement.** All insurance policies shall contain an endorsement whereby the carrier agrees that its insurance is primary and not contributory with or in excess of any coverage Company may carry. Contractor shall deliver to Company certificates of all policies of insurance upon the commencement date of this Agreement and thereafter, not less than ten (10) days prior to the expiration dates of said policies. Each policy shall provide that it cannot be canceled or materially changed except upon thirty (30) days notice by the insurance carrier to Company. Contractor will make its best efforts to ensure each policy shall be endorsed to provide a Waiver of Subrogation in favor of Company, its officers, directors, and employees.

## **ARTICLE XI**

### **Liability: Indemnification: and Limitations of Liability**

- 11.1 **Contractor's Liability.** In addition to Contractor's other obligations concerning liability under this Agreement, Contractor shall be fully liable for any loss, theft, destruction of, or damage to, any and all monies, funds, property, merchandise or materials of Company, any of Company's Customers, or such Customer's clients resulting from Contractor's acts or omissions, or the acts or omissions of Contractor, or the acts or omissions of Contractor's employees, agents, or subcontractors. Contractor shall maintain insurance covering Contractor's liability under this Section.
- 11.2 **Indemnification.** Contractor assumes all liability for, and shall defend, indemnify, and hold harmless Company and its parents, subsidiaries, affiliates, officers, directors, employees, agents, successors, and assigns (each, an "Indemnified Party") from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, suits, costs, and expenses (including, without limitation, reasonable legal fees and expenses), arising from any claims made by

others, of whatsoever kind or nature, imposed on, incurred by, or asserted against any Indemnified Party, resulting from, arising out of, or incurred with respect to:

- (a) the breach by, or act or omission of, Contractor under this Agreement; and
- (b) any other matter as to which Contractor in other provisions of this Agreement has agreed to indemnify Company.

- 11.3 Company shall not be liable for any claim for death, damage, or injury of any type to persons resulting from an act or omission of Contractor. Company shall not be liable for any claim for damage or injury to any materials or property owned, stored, held, or otherwise controlled by Contractor. Company shall not be liable for loss of, damage to, or interference with, Contractor's business. Company shall not be liable to Contractor for any special, indirect, incidental, exemplary, consequential, or punitive damages or loss of goodwill in any way relating to this Agreement, even if Company has been notified of the possibility or likelihood of such damages occurring, and regardless of whether such liability is based in contract, tort, negligence, strict liability, or otherwise. Finally, Company shall not be liable to Contractor or Contractor's employees, agents, or subcontractors for any loss or damage resulting from termination of this Agreement.

## **ARTICLE XII**

### **Contractor as an Independent Contractor**

- 12.1 It is expressly understood that Contractor, in its operations hereunder, is an independent contractor separate and distinct from Company. This Agreement shall not be construed to create a partnership, joint venture, or franchise between Company and Contractor, nor create between the Parties the relationship of employer and employee, principal and agent, or franchisor and franchisee.
- 12.2 Company may from time to time loan Contractor money or equipment pursuant to separate loan and equipment agreements. Contractor agrees and acknowledges that the Company's loaning money or equipment does not change the nature of the relationship between the parties. The Contractor remains an independent contractor regardless of the Company's decision whether to loan money or equipment.

## **ARTICLE XIII**

### **Representations and Warranties**

- 13.1 **Contractor's Representations and Warranties.** Contractor further represents and warrants to Company each of the following as of the Effective Date and continuing throughout the term of this Agreement and for three (3) days after the termination of this Agreement:
- (a) Contractor is duly licensed, authorized, and qualified to do business in each jurisdiction in which a license, authorization, certification, registration or qualification (local,

state, and federal) is required for the transaction of business in fulfillment of Contractor's obligations under this Agreement;

- (b) There is no outstanding litigation, arbitration, claim, or other dispute to which Contractor [or any Co-Signer] is a party that if decided unfavorably to it, would reasonably be expected to have a material adverse effect on the ability of any Party to fulfill its obligations under this Agreement;
- (c) Neither Contractor [nor any Co-Signor] of Contractor is a party to any contract, agreement, mortgage, note, deed, lease, or similar understanding with any third party that would have an adverse effect on the ability of Contractor to fulfill its obligations under this Agreement;
- (d) To Contractor's knowledge, no non-public fact or circumstance exists that would have, or potentially could result in, an adverse effect on Contractor's, Company's or Customers' public image or the public's perception of any of Contractor's, Company's, or Customers' brands or marks that may be used under this Agreement;
- (e) Contractor shall properly render the Services in accordance with this Agreement and shall execute each in accordance with the practices and commercially reasonable standards used in well-managed operations performing services similar to the Services with an adequate number of qualified individuals with suitable training, experience and skill to perform the Services. Contractor will follow all mandated safe work practices and submit proof of such practices;
- (f) Contractor shall maintain insurance coverage in the amounts and conditions as required by this Agreement;
- (g) Contractor shall perform its obligations in a manner that complies with all laws applicable to Contractor and its business, activities, facilities and the provision of Services hereunder.
- (h) Services shall be performed in a timely, good, and workmanlike, and professional manner to Company's reasonable satisfaction and in accordance with this Agreement, and all applicable laws, including business and professional licensing requirements, building and zoning codes and facilities and conditions standards,

## **ARTICLE XIV**

### **Events of Default**

- 14.1 **Compliance.** The failure of Contractor to: (i) comply with any term or condition of this Agreement, (ii) to make payment or reimbursement of funds owed Company, (iii) cease conduct that Company reasonably deems harmful to its general business interest or public images, even if unrelated to Contractor's obligations under this Agreement, (iv) to follow all local, state, or federal regulatory requirements related to Services performed, or (v) complete the Services at a particular Customer service site, which failure continues in effect or has otherwise not been remedied to Company's satisfaction within ten (10) days of Company's notice thereof to Contractor.

- 14.2 **Corrections.** The failure to (i) correct rejected, defective or nonconforming workmanship, or (ii) repair or replace defective or nonconforming products or materials sourced, furnished, manufactured, or fabricated by Contractor within ten (10) days or less.
- 14.3 **Payment to Others.** The failure of Contractor to timely pay any Contractor personnel which failure results, or could result, in the placement of a lien, writ of execution or attachment, or other claim or security interest on or against any property of Company or any property of any Company Customer.
- 14.4 **Liens.** The failure of contractor to satisfy, discharge, or release any lien, writ of execution or attachment, or other claim or security interest against any property of Company or a specific client or Customer filed in connection with the Services within ten (10) business days of the date Contractor was first made aware of such security interest.

## **ARTICLE XV**

### **General Terms and Conditions**

- 15.1 The Company, or its agents, may from time to time during the term of this Agreement, and for a period of six (6) months thereafter, during reasonable business hours, audit the records of Contractor pertaining to this Agreement for compliance with this Agreement.
- 15.2 Contractor authorizes Company to make an independent investigation of its background, police and criminal records, references, character, past employment and contracts, education, medical and/or worker's compensation claims. Contractor also acknowledges that Company may obtain a credit and/or financial report on Contractor. Contractor hereby releases and indemnifies Company from any demands, claims, or liability arising from the gathering and use of the information required under this Section.
- 15.3 Contractor shall not transfer, assign, pledge, encumber, or sublicense this Agreement, or Contractor's interest in and to this Agreement, without the express prior written consent of Company. Company shall have the right to transfer or assign this Agreement to a present or future parent, subsidiary, or affiliate.
- 15.4 All notices or other communication shall be in writing and personally delivered or mailed by certified mail or by overnight courier, postage prepaid, to the addresses set forth below. Either party may change its notice address by giving written notice to the other. Notices shall be deemed to have been served and given upon receipt.
- 15.5 This Agreement, together with the Exhibits and attachments hereto, and Company's current and procedures constitute the entire Agreement between the parties. Any prior agreements, promises, negotiations, or representations that may have been made or relied upon which are not expressly set forth in these documents are of no force or effect. This Agreement may only be amended or modified by a writing signed by an authorized representative of Company and by Contractor.
- 15.6 No provisions of this Agreement shall be waived or be construed to be waived by Company unless such waiver is in writing and signed by Company. No failure on the part of Company to exercise any of the rights, remedies, and options granted hereunder, or to insist upon strict compliance by Contractor, and no custom or practice of the parties at variance with the terms hereof shall constitute any waiver of Company's rights to demand exact compliance with the terms hereof. A waiver by Company with respect to any specific default shall not affect nor impair the rights of Company with respect to any delay or omission to exercise any right arising from any subsequent default.

- 15.7 The invalidity or unenforceability of any provision of this Agreement shall not impair the validity or enforceability of any other provision. The captions and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement nor limit or amplify the terms and provisions hereof. The terms used in this Agreement shall include the plural as well as the singular, and the liability of Contractor, if more than one, shall be joint and several. All rights, privileges, and remedies conferred herein upon the parties shall be cumulative and are in addition to any rights, powers, privileges, and remedies available to the parties by statute or otherwise at law or in equity.
- 15.8 Should Company engage the services of an attorney to enforce any of its rights hereunder, or to collect any amounts due, Contractor shall pay Company for all reasonable costs and expenses incurred, including reasonable attorney's fees, as permitted by State law. Notwithstanding any other provision in this Agreement to the contrary, as a condition precedent to the institution of any lawsuit or regulatory proceeding under this Agreement, all disputes under this Agreement shall be submitted to mediation utilizing a professional mediator selected by Company and Contractor. The mediation shall be conducted at a mutually agreed upon time and at a mutually agreed upon location. The mediator's costs and expenses shall be split equally. Only if the mediation is unsuccessful, or if Company and Contractor are unable to agree on a mediator or on the time and/or place of the mediation within sixty (60) days of the date on which the dispute(s) began, shall the Company or Contractor have the right to file any lawsuit or initiate any regulatory proceeding under this Agreement.
- 15.9 Contractor shall not record this Agreement in any public office without the express prior written consent of Company.
- 15.10 This Agreement shall be binding upon and shall inure to the benefit of the parties, their permitted successors and assigns.
- 15.11 Time is of the essence of this Agreement.
- 15.12 This Agreement shall be construed and enforced in accordance with the laws of the State of Georgia, and venue shall lie in Hall County.

**INDEPENDENT CONTRACTOR ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND FURTHER AGREES THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PROPOSALS ORAL OR WRITTEN AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.**

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Independent Contractor:**\_\_\_\_\_

By:\_\_\_\_\_

Signature

\_\_\_\_\_

Date

00013839

Independent Contractor Initials: \_\_\_\_\_

Incredible Installations, LLC Initials: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Business Address City/State Zip

**Incredible Installations, LLC**

By: \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Business Address City/State Zip

## **Exhibit A**

### **Products and Services**

Please indicate a brief description of your offered installation services by initialing below:

\_\_\_\_ Residential countertop Installation

\_\_\_\_ Commercial countertop Installation

\_\_\_\_ Commercial wall cladding Installation

Please indicate a brief description of your offered repair services by initialing below:

\_\_\_\_ Stone Repair

\_\_\_\_ Crack Repair

\_\_\_\_ Surface Repair

\_\_\_\_ Wall (Sheetrock) Repair

\_\_\_\_ Floor/Ceiling (Sheetrock, Tile, Hardwood and/or subfloor) Repair

\_\_\_\_ Clean, ReSeal and Polish existing countertops

\_\_\_\_ Sink Repair

\_\_\_\_ Removal and/or Demolition of existing countertops

\_\_\_\_ Plumbing

---

Contractor Supplied Equipment in order to perform above services, as indicated below:

\_\_\_\_ Truck

\_\_\_\_ Scaffolds

\_\_\_\_ A-frame(s)

\_\_\_\_ Ladders

\_\_\_\_ Trailer (please indicate size and capacity)

## Exhibit B

### Market Areas

\_\_\_\_\_ (name of independent contractor) will provide the installation services in the following markets (please initial the areas you will service):

\_\_\_\_\_ All 50 U.S. States

OR

<u>Alabama</u>	<u>Louisiana</u>	<u>Ohio</u>
<u>Alaska</u>	<u>Maine</u>	<u>Oklahoma</u>
<u>Arizona</u>	<u>Maryland</u>	<u>Oregon</u>
<u>Arkansas</u>	<u>Massachusetts</u>	<u>Pennsylvania</u>
<u>California</u>	<u>Michigan</u>	<u>Rhode Island</u>
<u>Colorado</u>	<u>Minnesota</u>	<u>South Carolina</u>
<u>Connecticut</u>	<u>Mississippi</u>	<u>South Dakota</u>
<u>Delaware</u>	<u>Missouri</u>	<u>Tennessee</u>
<u>Florida</u>	<u>Montana</u>	<u>Texas</u>
<u>Georgia</u>	<u>Nebraska</u>	<u>Utah</u>
<u>Hawaii</u>	<u>Nevada</u>	<u>Vermont</u>
<u>Idaho</u>	<u>New Hampshire</u>	<u>Virginia</u>
<u>Illinois</u>	<u>New Jersey</u>	<u>Washington</u>
<u>Indiana</u>	<u>New Mexico</u>	<u>West Virginia</u>
<u>Iowa</u>	<u>New York</u>	<u>Wisconsin</u>
<u>Kansas</u>	<u>North Carolina</u>	<u>Wyoming</u>
<u>Kentucky</u>	<u>North Dakota</u>	



For Contract Date: \_\_\_\_\_

## Exhibit D

From:

# INVOICE

To:

Invoice #

Date

Due Date

## Install

Install Date

Address

SQFT

PO#

Total \$ Amount

[illegible]

**Exhibit E**

**PAGE RESERVED FOR EXHIBIT E; INTERIM LIEN WAIVER**

**Exhibit F**

00013839

Independent Contractor Initials: \_\_\_\_\_

19

Incredible Installations, LLC Initials: \_\_\_\_\_

WAIVER AND RELEASE

UPON FINAL PAYMENT

STATE OF GEORGIA

COUNTY OF \_\_\_\_\_

THE INDEPENDENT CONTRACTOR AND/OR MATERIALMAN HAS BEEN ENGAGED BY INCREDIBLE INSTALLATIONS, LLC TO FURNISH INSTALLATION SERVICES FOR THE CONSTRUCTION OR IMPROVEMENTS REFLECTED BY THE FOLLOWING PURCHASE ORDER FOR THE PERIOD \_\_\_\_\_ COVERING TO \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

UPON THE RECEIPT OF THE SUM OF \_\_\_\_\_, THE INSTALLER AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING REFERENCED PURCHASE ORDERS OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID SERVICES.

GIVEN UNDER HAND AND SEAL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
WITNESS SIGNATURE

\_\_\_\_\_  
INDEPENDENT CONTRACTOR

\_\_\_\_\_  
PRINT NAME

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.

**Exhibit G**

00013839

# MEMORANDUM

Date: October 21, 2015  
To: Incredible Installations's Independent Contractors  
Re: Fair Labor Standards Act Compliance (FLSA)

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As all of you know, you have specifically agreed to comply with the Fair Labor Standards Act ('FLSA') as well as related employment law requirements in the Independent Contractor Agreement entered into with Incredible Installations, LLC. It has come to my attention that the U.S. Department of Labor ("DOL") is paying even greater attention to the requirement that all employees be paid appropriately for all hours worked, and particularly, the payment for overtime work, when applicable. Obviously, I am not aware of the precise manner in which independent contractors are paying the installers who work for your companies, but please be aware of the following:

Incredible Installations contracts with you to complete installations based upon a price per job basis, or in some instances, payment per unit installed. How you staff your crews and pay them is completely left to your discretion. In some instances, I suspect payment is made based upon an hourly wage, while in other situations, your crew members are paid based upon a daily rate for the services they performed. Regardless of the manner of payment, the DOL will expect that you keep records in some fashion of the precise hours of your installers' work each work week.

For example, if you are paying an installer in your crews \$96 per day for five days a week, that amounts to \$480.00 for the entire work week. On a 40 hour work week that would equal \$12 an hour. If in fact the installer works 50 hours to receive the \$480.00 you pay him/her, the installer actually receives a regular rate of \$9.60 an hour. Of course, the DOL would not question the hourly rate paid, as it exceeds the minimum wage requirements of the FLSA. However, because in this example the crew member worked ten (10) hours of overtime (over 40 hours), the DOL would conclude that the installer should be entitled to another "half-time" payment for the 10 overtime hours. Based upon this example, your installer would be entitled to 10 times ( $1/2$  of \$9.60 = \$4.80) per hour totaling \$48.00 additional pay for overtime work per this example. Therefore, in order to comply with wage and hour requirements, all independent contractors need to be able to determine the actual hours worked by their crews on a weekly basis. If overtime obligations are to be avoided, it is suggested that you consider properly staffing accepted Services to ensure that work hours not exceed 40 hours per week per installer. Otherwise, appropriate payment for overtime is required to satisfy wage and hour regulations.

Failure to comply will put your Agreement with Incredible Installations at risk. If Incredible Installations has a reason to believe you are not in compliance with Rules and Regulations set forth in the Agreement, Incredible Installations may choose to terminate our Agreement with any of our contractors. Please refer to Article I of your Independent Contractor Agreement.