**INDEPENDENT DEVELOPER OR CONTRACTOR AGREEMENT**

This Independent Contractor Agreement (the “Agreement”) is made as of [DATE] between [CLIENT] with its principal place of business located at [CLIENT PLACE OF BUSINESS] (the "Client") and [CONTRACTOR NAME], located at [CONTRACTOR PLACE OF BUSINESS] (the "Contractor").

WHEREAS, Client requests Contractor to perform services for it and may request Contractor to perform other services in the future; and

WHEREAS, the Client and Contractor desire to enter into an agreement, which will define respective rights and duties as to all services to be performed;

NOW, THEREFORE, in consideration of covenants and agreements contained herein, the parties hereto agree as follows:

1. **Services**

Effective [SERVICES COMMENCEMENT DATE] Client shall retain Contractor and Contractor shall provide Client with services (the "Services"), which shall include, without limitation:

DESCRIBE SERVICES OR REFERENCE ATTACHMENT HERE.

**Timeframe**. The Contractor will use commercially reasonable efforts to perform the Services within the schedule outlined in Services above. Contractor’s delivery timeframe depends upon the Client’s prompt response to any questions or requests for Client materials.

**Testing & Acceptance**. The Contractor shall use commercially reasonable efforts to test deliverables before providing them to the Client.

The Client shall promptly review all deliverables, and must notify the Contractor of any failure to conform to the Services within 5 business days of receipt. If Contractor does not receive a timely notification, the deliverable will be deemed accepted. The Client’s notification must clearly identify the problems with the Deliverable.

**Client Responsibilities**. Client must promptly: (a) coordinate any decision-making activities with 3rd parties; (b) provide Client Content in a form suitable for reproduction or incorporation into the Deliverables; and (c) proofread deliverables.

### **Client Representations**

Client represents and warrants to Contractor that:

* Client owns sufficient right, title, and interest in the Client Content to permit Contractor’s use of the Client Content in performing the Services,
* To the best of Client’s knowledge, Contractor’s use of the Client Content will not infringe the rights of any third party,
* Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and
* Client shall comply with all laws and regulations governing the Services and Deliverables.

### **Contractor Representations.**

Contractor represents and warrants to Client that:

* The final deliverables will be the Contractor’s original creative work, except that Contractor may incorporate Client Content, work from its Contractor Agents and third party material (for example, stock photos, or Software as a Service).
* For any final deliverable that includes the work of independent contractors or third party material, Contractor shall secure sufficient rights for Client to use the final deliverables for their intended purpose.
* To the best of Contractor’s knowledge, the final deliverables will not infringe upon the IP rights of any third party. However, Contractor will not be conducting any type of IP clearance search (for example, Contractor will not be conducting a copyright, trademark, patent or design patent clearance search).

2. **Changes**

1. **Change Requests**. The Client, without invalidating this Agreement, may request changes in the work within the general scope of the Agreement consisting of additions, deletions, or other revisions.
2. **Adjustments to Compensation**. In the event that any such changes materially impact the cost to the Contractor of performing the Services or the time required for such performance, the parties shall negotiate in good faith a reasonable and equitable adjustment in the applicable Fees and schedule, as applicable.
3. **New Scope.** If the Change Request alters the scope of the project by more than 20%, the Contractor may submit a new proposal to the Client.

3. **Compensation**

1. **Hourly** **Amount**. The work performed by Contractor shall be performed at the rate set forth below, and not exceed the total estimated amount specified below:

Hourly fee: $[HOURLY RATE]

Total estimated amount: $[CAP AMOUNT]

1. **Payment**. Invoices shall be issued to Client by Contractor monthly after performance of the Work, and payment shall be due 14 business days after receipt of invoices.

1. **Project** **Amount**. The work performed by Contractor shall be performed at the rate set forth below, and not exceed the total estimated amount specified below:

Project fee: $[PROJECT RATE]

Additional hourly rate (if requested by the company for additional work or changes): $[PROJECT HOURLY RATE]

1. **Payment**. Invoices shall be issued to Client by Contractor. 40% of the project fee will be paid at the start of the project. 40% will be paid upon successful completion of the project. The remaining 20% shall be paid following final implementation of the project including any agreed upon training, documentation, debugging, app store submission, store approval and testing. All payments shall be due 14 business days after receipt of invoices.
2. **Taxes**. Client shall not be responsible for federal, state and local taxes derived from the Contractor's net income or for the withholding and/or payment of any federal, state and local income and other payroll taxes, workers' compensation, disability benefits or other legal requirements applicable to Contractor.

4. **Expenses**

1. **Payment**. A Client shall reimburse Contractor for all pre-approved, reasonable and necessary expenses, including, without limitation, domestic and foreign travel, lodging and meal expenses incurred in connection with the Services.
2. **Substantiation**. The Contractor shall provide Client with documentation supporting all expenses.
3. **Payment**. Client shall reimburse Contractor within 14 days upon receipt of a request for reimbursement from the Contractor.

### 5. **Client Rights in Deliverables**

1. **IP Assignment**. Upon completion of the Services and full payment of all invoices, the Contractor shall assign IP rights to the Client. These IP rights include all ownership rights, including any copyrights, in any artwork, designs and software created by the Contractor and incorporated into a final deliverable, except as otherwise noted in this Agreement.

### 6. **Contractor Rights in Deliverables**

1. **Preliminary Works**. Contractor retains the rights to all preliminary works that are not incorporated into a final deliverable.
2. **Contractor Portfolio**. Contractor may display the deliverables in the Contractor’s portfolios and websites, and in galleries, design periodicals and other exhibits for the purposes of professional recognition. Likewise, the Contractor may publicly describe its role in the project.
3. **Credit**. If the Contractor incorporates credits into the deliverables, any use of the deliverables shall continue to bear the credits in the same form, size and location. Contractor credits will not be incorporated into any logo designed for the Client.
4. **Contractor Tools**. The Contractor may incorporate certain Contractor Tools into the deliverables.
   1. “Contractor Tools” means all programming, deployment, database or design tools developed or utilized by Contractor in performing the Services, including without limitation: pre-existing and newly developed software, web authoring tools, type fonts, and application tools.
   2. In the event Contractor Tools are incorporated into any final deliverable, then Contractor grants Client a royalty-free, perpetual, worldwide, non-exclusive license to use the Contractor Tools to the extent necessary to use the final deliverables. Contractor retains all other rights in the Contractor Tools.

7. **Independent Contractor Status**

1. **Status**. Contractor is an independent contractor of Client. Nothing contained in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship.
2. **No Authority**. Contractor shall have no authority to act as agent for, or on behalf of, Client, or to represent Client, or bind Client in any manner.
3. **No Employee Benefits**. Contractor shall not be entitled to worker's compensation, retirement, insurance or other benefits afforded to employees of Client.

## 8. **Contractor and Client Relationship**

1. **Non-Exclusive**. This Agreement does not create an exclusive relationship. The deliverables are not a "work for hire" under Copyright Law.
2. **No Assignment**. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Any such attempted assignment will be void *ab initio*. Consent is not required for a disposition of substantially all assets of the assigning party’s business.

9. **Representations and Warranties**. The Client and the Contractor respectively represents and warrants to each other that each respectively is fully authorized and empowered to enter into the Agreement and that their entering into the Agreement and to each parties' knowledge the performance of their respective obligations under the Agreement will not violate any agreement between the Client or the Contractor respectively and any other person, firm or organization or any law or governmental regulation.

10. **Confidential Information**

Each party shall maintain Confidential Information in strict confidence, and shall not use Confidential Information except (a) as necessary to perform its obligations under the Agreement, or (b) as required by a court or governmental authority. Confidential Information includes proprietary technical and business information, preliminary works, and any other information marked “Confidential.”

**Exception**. Confidential Information does not include (a) any information that is in the public domain, (b) becomes publicly known through no fault of the receiving party, or (c) is otherwise known by the receiving party before obtaining access to it under this Agreement or properly received from a third party without an obligation of confidentiality.

11. **Intellectual Property**

1. **Work Product**. During the course of performing the Services, Contractor and its directors, officers, employees, or other representatives may, independently or in conjunction with Client, develop information, produce work product, or achieve other results for Client in connection with the Services it performs for Client.
2. **Ownership**. Contractor agrees that such information, work product, and other results, systems and information developed by Contractor and/or Client in connection with such Services (hereinafter referred to collectively as the "Work Product") shall, to the extent permitted by law, be a "work made for hire" within the definition of Section 101 of the Copyright Act (17 U.S.C. 101), and shall remain the sole and exclusive property of Client.
3. **Assignment of Interest**. To the extent any Work Product is not deemed to be a work made for hire within the definition of the Copyright Act, Contractor with effect from creation of any and all Work Product, hereby assigns, and agrees to assign, to Client all right, title and interest in and to such Work Product, including but not limited to copyright, all rights subsumed thereunder, and all other intellectual property rights, including all extensions and renewals thereof.
4. **Moral Rights**. Contractor also agrees to waive any and all moral rights relating to the Work Product, including but not limited to, any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use, and subsequent modifications.
5. **Assistance**. Contractor further agrees to provide all assistance reasonably requested by Client, both during and subsequent to the Term of this Agreement, in the establishment, preservation and enforcement of Client's rights in the Work Product.
6. **Return of Property**. Upon the termination of this Agreement, Contractor agrees to deliver promptly to Client all printed, electronic, audio-visual, and other tangible manifestations of the Work Product, including all originals and copies thereof.

12. **Non-Solicitation**

1. During the term of this Agreement, and for a period of 1 year after its expiration, Client shall not solicit any of Contractor’s employees or Design Agents (collectively, “Contractor Employee”) without the prior written consent of the Contractor. “Solicit” is defined to include: solicit, recruit, engage, or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire, or any other basis.
2. During the term of this Agreement, and for a period of 1 year after its expiration, Contractor shall not solicit any of Client’s employees or customers without the prior written consent of the Client. “Solicit” is defined to include: solicit, recruit, engage, or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire, or any other basis.
3. **Agency Commission**. In the event of such Solicitation, Client shall pay Contractor an agency commission of 25% of the Contractor Employee’s starting salary with Client, or if hired as a contractor, 25% of the total contract fees paid to Contractor Employee during the first year following the Solicitation.

13. **Term**

This Agreement shall commence on the date and year first above written and shall continue for a period of 1 year unless earlier terminated in accordance with this Agreement.

14. **Termination**

1. **Discretionary Termination, Upon Notice**. Either party may terminate this agreement in its business discretion upon sufficient advance notice. The amount of notice required is 1/4 of the estimated project duration. For example, if the Statement of Work estimates the services will take 80 days from kick-off to final delivery, advance notice of at least 20 days will be sufficient for discretionary termination.
2. **Discretionary Termination by Client**. IF: Client uses this discretionary termination provision, THEN: Contractor will retain all payments already made as of the notification date, and Client shall pay Contractor (a) for all expenses incurred as of the date of notification of termination, (b) an early termination fee equal to 25% of the total project fee, and (c) No IP rights will be transferred.
3. **Discretionary Termination by Contractor**. IF: Contractor uses this discretionary termination provision, THEN: (a) Contractor will retain (or, if not paid in advance, will be due) all costs already incurred and a prorated portion of the fees for services performed up to the termination date, (b) Contractor will assist Client in transferring the project to a new contractor, and (c) Contractor will assign sufficient IP rights to Client to allow Client to continue the project.
4. **Termination for Bankruptcy**. Subject to any restrictions imposed by law, either party may immediately terminate this Agreement, if the other party either: (1) ceases to do business in the normal course; (2) becomes insolvent; (3) admits in writing its inability to meet its debts or other obligations as they become due; (4) makes a general assignment for the benefit of creditors; (5) has a receiver appointed for its business or assets; (6) files a voluntary petition for protection under the bankruptcy laws; (7) becomes the subject of an involuntary petition under the bankruptcy laws that is not dismissed within 60 days.
5. **Termination for Breach**. If a material breach of this Agreement is not cured within 10 business days after a party’s receiving notice of the breach, then the non-breaching party may terminate this Agreement immediately upon notice.
6. **Termination Procedure**. Upon expiration or termination of this Agreement: (a) each party shall return (or, at the disclosing party’s request, destroy) the Confidential Information of the other party, and (b) other than as expressly provided in this Agreement, all rights and obligations of each party under this Agreement, exclusive of the Services, shall survive.

### 15. **Limitation of Liability**

The services and the work product of the Contractor are sold “as is.” In all circumstances, the Contractor’s maximum liability to Client for damages for any and all causes whatsoever, and Client’s maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to Contractor’s net profit.

In no event shall Contractor be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by Contractor, even if Contractor has been advised of the possibility of such damages.

### 16. **Limited Warranty**

Except for the express representations and warranties stated in this agreement, Contractor makes no warranties whatsoever. Contractor explicitly disclaims any other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose or compliance with laws or government rules or regulations applicable to the project.

17. **Force Majeure**

Either party may invoke Force Majeure to excuse the failure of its timely performance, if such failure was caused by: fire; flood; hurricane, tornado, or other severe storm; earthquake; act of war; sabotage; terrorism; riot; interruption or failure of electrical or telecommunications service (for example, Internet failures); or failure of suppliers, subcontractors, and carriers to substantially meet their performance obligations.

Failure to make a payment may only be considered a Force Majeure event if caused by an interruption in a third-party payment system that otherwise qualifies as a force-majeure event.

A party invoking force majeure to excuse its failure of timely performance must show that the force-majeure event(s) and their relevant effects (i) were beyond the invoking party’s reasonable control and (ii) could not have been avoided through the exercise of due care by the invoking party.

18. **Indemnification**

1. **Indemnification by Contractor**. Contractor agrees to indemnify and hold harmless Client and its officers, directors, employees and agents, from and against all claims, liabilities, losses, costs, damages, judgments, penalties, fines, attorneys' fees, court costs and other legal expenses, insurance deductibles and all other expenses arising out of or relating to, directly or indirectly, from:
   1. the negligent, grossly negligent, or intentional act or omission of Contractor or its directors, officers, employees, agents or Contractors,
   2. Contractor's failure to perform any of its obligations under this Agreement, and
   3. any act or omission of Contractor in connection with the Work.
2. **Notification**. Client will promptly notify Contractor of any claim for indemnification.
3. **Survival**. Contractor's obligations under this Section shall survive termination or expiration of this Agreement.

19. **General Provisions**

1. **Entire Agreement**. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements, representations and understandings of the parties, written or oral.
2. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
3. **Amendment**. This Agreement may be amended only by written agreement of the parties.
4. **Notices**. All notices shall be sent by email. Permissible addresses for notice include those stated in this Agreement and any other address reasonably communicated.  
   A notice that is sent by email but is not read by the addressee is nevertheless effective if, but only if, it has been (a) sent from an email account that has been designated for notice and (b) delivered to an email account that has been designated for notice. Email accounts designated for notice are identified at the bottom of this Agreement, and may be amended email or written notice.
5. **Assignment**. This Agreement shall not be assigned by either party without the consent of the other party.
6. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of [JURISDICTION STATE], without regard to its conflict of laws rules.
7. **No Waiver of Rights**. A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

IN WITNESS WHEREOF, the Client and the Contractor have each executed and delivered this Agreement as of the Effective Date.

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| --- | --- |
| Contractor name (*please type*): | Client Contact name (*please type*): |
|  |  |
| Contractor email for Notice: | Client email for Notice: |
|  |  |
| Contractor signature: | Client Contact signature: |
|  |  |
| Date signed: | Date signed: |
|  |  |