

# Independent Contractor Agreement for Direct Salesperson

This Agreement is made between \_\_\_\_\_ ("Client"), with a principal place of business at \_\_\_\_\_, and \_\_\_\_\_ ("Contractor"), with a principal place of business at \_\_\_\_\_.

## 1. Services to Be Performed

Contractor agrees to sell the following product or merchandise for client:

\_\_\_\_\_.

*[Optional: Check if applicable.]*

☐ Contractor will seek sales of the product in the homes of various individuals. *[End option.]*

## 2. Compensation

In consideration for the services to be performed by Contractor, Client agrees to pay Contractor a commission on completed sales as follows: \_\_\_\_\_.

Contractor acknowledges that no other compensation is payable by Client and that all of Contractor's compensation will depend on sales made by Contractor. None of Contractor's compensation will be based on the number of hours worked by Contractor.

## 3. Expenses

*[Choose Alternative A or B.]*

☐ **ALTERNATIVE A**

Contractor will be responsible for all expenses incurred while performing services under this Agreement. This includes license fees, memberships, and dues; automobile and other travel expenses; meals and entertainment; insurance premiums; and all salary, expenses, and other compensation paid to employees or contract personnel Contractor hires to complete the work under this Agreement.

☐ **ALTERNATIVE B**

Client will reimburse Contractor for the following expenses that are directly attributable

to work performed under this Agreement. \_\_\_\_\_ Contractor will submit an itemized statement of Contractor's expenses. Client will pay Contractor within 30 days after receipt of each statement.

#### **[ ] 4. Materials**

Contractor will furnish all materials, tools, and equipment used to provide the services required by this Agreement.

#### **5. Independent Contractor Status**

Contractor is an independent contractor, not Client's employee. Contractor's employees or contract personnel are not Client's employees. Contractor and Client agree to the following rights consistent with an independent contractor relationship.

*[Check all that apply.]*

[ ] Contractor has the right to perform services for others during the term of this Agreement.

[ ] Contractor will have no obligation to perform any services other than the sale of the product described here.

[ ] Contractor has the sole right to control and direct the means, manner, and method by which the services required by this Agreement will be performed. Consistent with this freedom from Client's control, Contractor

[ ] does not have to provide or accept any tools furnished by Client

[ ] is not required to attend sales meetings organized by Client

[ ] does not have to obtain Client's preapproval for orders, and

[ ] will adopt and carry out Contractor's own sales strategy.

[ ] Subject to any restrictions on Contractor's sales territory contained in this Agreement, Contractor has the right to perform the services required by this Agreement at any location or time.

[ ] Contractor has the right to hire assistants as subcontractors or to use employees to provide the services required by this Agreement, except that Client may supply

Contractor with sales terms.

[ ] Contractor or Contractor's employees or contract personnel will perform the services required by this Agreement. Client will not hire, supervise, or pay any assistants to help Contractor.

[ ] Neither Contractor nor Contractor's employees or contract personnel will receive any training from Client in the skills necessary to perform the services required by this Agreement.

[ ] Client will not require Contractor or Contractor's employees or contract personnel to devote full time to performing the services required by this Agreement.

## **6. Business Permits, Certificates, and Licenses**

Contractor has complied with all federal, state, and local laws requiring business permits, certificates, and licenses required to carry out the services to be performed under this Agreement.

## **7. State and Federal Taxes**

Client will not:

- withhold FICA (Social Security and Medicare taxes) from Contractor's payments or make FICA payments on Contractor's behalf
- make state or federal unemployment compensation contributions on Contractor's behalf, or
- withhold state or federal income tax from Contractor's payments.

Contractor will pay all taxes incurred while performing services under this Agreement—including all applicable income taxes and, if Contractor is not a corporation, self-employment (social security) taxes. Upon demand, Contractor will provide Client with proof that such payments have been made.

## **8. Fringe Benefits**

Contractor understands that neither Contractor nor Contractor's employees or contract personnel are eligible to participate in any employee pension, health, vacation pay, sick

pay, or other fringe benefit plan of Client. If Contractor is subsequently classified by the IRS as a common law employee, Contractor expressly waives his or her rights to any benefits to which he or she was, or might have become, entitled.

## **9. Workers' Compensation**

Client will not obtain workers' compensation insurance on behalf of Contractor or Contractor's employees or contract personnel. Contractor will provide Contractor's employees and contract personnel with workers' compensation insurance to the extent required by law and provide Client with a certificate of workers' compensation insurance.

*[Optional: Check if applicable.]*

☐ Contractor will obtain workers' compensation insurance coverage for Contractor. Contractor will provide Client with proof that such coverage has been obtained before starting work. *[End Option.]*

## **10. Unemployment Compensation**

Client will make no state or federal unemployment compensation payments on behalf of Contractor or Contractor's employees or contract personnel. Contractor will not be entitled to these benefits in connection with work performed under this Agreement.

## **11. Insurance**

Client will not provide any insurance coverage of any kind for Contractor or Contractor's employees or contract personnel.

Contractor will procure and maintain a broad form commercial general liability insurance policy providing combined single limits of not less than \$\_\_\_\_\_ per occurrence and \$\_\_\_\_\_ annual aggregate, and will add Client as an additional insured under the policy.

Contractor will maintain automobile liability insurance for injuries to person and property, including coverage for all owned and rented automotive equipment, providing for coverage of at least \$\_\_\_\_\_ for each person, \$\_\_\_\_\_ for each accident, \$\_\_\_\_\_ for property damage, and \$\_\_\_\_\_ annual aggregate.

Before commencing any work under this Agreement, Contractor will provide Client with

proof of this insurance.

Contractor will indemnify and hold Client harmless from any loss or liability arising from performing services under this Agreement, including any claim for injuries or damages caused by Contractor while traveling in Contractor's automobile and performing services under this Agreement.

### **13. Confidentiality**

Contractor acknowledges that it will be necessary for Client to disclose certain confidential and proprietary information to Contractor in order for Contractor to perform duties under this Agreement. Contractor acknowledges that any disclosure to any third party or any misuse of this proprietary or confidential information would irreparably harm Client. Accordingly, Contractor will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of Client without Client's prior written permission except to the extent necessary to perform services on Client's behalf.

Proprietary or confidential information includes:

- the written, printed, graphic or electronically recorded materials furnished by Client for Contractor to use
- business or marketing plans or strategies, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, documents and improvements of any kind, sales projections, and pricing information
- information belonging to customers and suppliers of Client about which Contractor gained knowledge as a result of Contractor's services to Client
- any written or tangible information stamped "confidential," "proprietary," or with a similar legend, and
- any information that Client makes reasonable efforts to maintain the secrecy of.

Contractor will not be restricted in using any material that is publicly available, already in Contractor's possession prior to commencement of Contractor's provision of services to

Client, known to Contractor without restriction, or rightfully obtained by Contractor from sources other than Client.

Upon termination of Contractor's services to Client, or at Client's request, Contractor will deliver to Client all materials in Contractor's possession relating to Client's business.

**13. Term of Agreement**

This agreement will become effective when signed by both parties and will terminate on the earliest of:

- the date Contractor completes the services required by this Agreement
- [date]  , or
- the date a party terminates the Agreement as provided below.

**14. Terminating the Agreement**

*[Choose Alternative A or B.]*

☐ **ALTERNATIVE A**

With reasonable cause, either Client or Contractor may terminate this Agreement, effective immediately upon giving written notice.

Reasonable cause includes:

- a material violation of this Agreement, or
- any act exposing the other party to liability to others for personal injury or property damage.

☐ **ALTERNATIVE B**

Either party may terminate this Agreement any time by giving \_\_\_\_\_ days' written notice to the other party of the intent to terminate.

**15. Exclusive Agreement**

This Agreement (including any attached exhibits) is the entire Agreement between Contractor and Client.

**16. Resolving Disputes**

*[Choose Alternative A, B, or C and any desired optional clauses.]*

☐ **ALTERNATIVE A**

If a dispute arises under this Agreement, any party may take the matter to court.

*[Optional: Check if applicable.]*

☐ If any court action is necessary to enforce this Agreement, the prevailing party will be entitled to reasonable attorney fees, costs, and expenses in addition to any other relief to which the party may be entitled. *[End option.]*

☐ **ALTERNATIVE B**

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in \_\_\_\_ *[list city or county where mediation will occur]* \_\_\_\_\_. Any costs and fees other than attorney fees associated with the mediation will be shared equally by the parties. If the dispute is not resolved within 30 days after it is referred to the mediator, any party may take the matter to court.

*[Optional: Check if applicable.]*

☐ If any court action is necessary to enforce this Agreement, the prevailing party will be entitled to reasonable attorney fees, costs, and expenses in addition to any other relief to which the party may be entitled. *[End option.]*

☐ **ALTERNATIVE C**

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in \_\_\_\_ *[list city or county where mediation will occur]* \_\_\_\_\_. Any costs and fees other than attorney fees associated with the mediation will be shared equally by the parties. If it proves impossible to arrive at a mutually satisfactory solution through mediation, the parties agree to submit the dispute to a mutually agreed-upon arbitrator in \_\_\_\_ *[list city or county where arbitration will occur]* \_\_\_\_\_. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction to do so. Costs of arbitration, including attorney fees, will be allocated by the arbitrator.

**15. Applicable Law**

This Agreement will be governed by the laws of the state of \_\_\_\_\_

**18. Notices**

All notices and other communications in connection with this Agreement will be in writing and will be considered given as follows:

- when delivered personally to the recipient's address as stated on this Agreement
- three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement, or
- when sent by fax or electronic mail, such notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class mail and the recipient delivers a written confirmation of receipt.

**19. No Partnership**

This Agreement does not create a partnership relationship. Contractor does not have authority to enter into contracts on Client's behalf.

*[Optional Clause: Check if applicable.]*

**[ ] 20. Assignment and Delegation**

Either Contractor or Client may assign its rights and may delegate its duties under this Agreement.

*[End Optional Clause.]*

**Signature**

Client: \_\_\_\_\_  
[Name of Client]

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

Signature

Typed or Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Contractor: \_\_\_\_\_  
[Name of Contractor]



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

Signature

Typed or Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Employee ID Number: \_\_\_\_\_

Date: \_\_\_\_\_

**Nolo**