

Independent Contractor Agreement for Software Consultant

This Agreement is made between _____ ("Client"), with a principal place of business at _____, and _____ ("Consultant"), with a principal place of business at _____.

1. Services to Be Performed

[Choose Alternative A or B.]

☐ ALTERNATIVE A

Consultant agrees to perform the following services for Client:

☐ ALTERNATIVE B

Consultant agrees to perform the services described in Exhibit A, which is attached to and made part of this Agreement.

2. Payment

[Choose Alternative A, B, or C, and optional clause, if desired.]

☐ ALTERNATIVE A

Consultant will be paid \$_____ upon completion of the work as detailed in Clause 1 of this Agreement.

☐ ALTERNATIVE B

Client will pay Consultant a fee for of \$_____, in _____ installments as follows:

(a) \$_____ upon completion of the following services: _____

(b) \$_____ upon completion of the following services: _____

(c) \$_____ upon completion of all the work to be performed and the services to be rendered in accordance with Clause 1, above, and written acceptance by Client.

☐ ALTERNATIVE C

Consultant will be compensated at the rate of \$_____ per _____ (hour/day/week/month)_____.

[Optional: Check and complete if applicable.]

☐ Unless otherwise agreed upon in writing by Client, Client's maximum liability for all services performed during the term of this Agreement will not exceed \$_____. *[End option.]*

3. Expenses

[Choose Alternative A or B.]

☐ **ALTERNATIVE A**

Consultant will be responsible for all expenses incurred while performing services under this Agreement.

☐ **ALTERNATIVE B**

Consultant will not be reimbursed for any expenses incurred in connection with the performance of services under this Agreement, unless those expenses are approved in advance in writing by Client.

4. Invoicing

Consultant will submit invoices for all services rendered. Client will pay Consultant within _____ days after receipt of each invoice.

5. Independent Contractor Status

Consultant is an independent contractor, and neither Consultant nor Consultant's employees or contract personnel is, or will be deemed, Client's employees. In its capacity as an independent contractor, Consultant agrees and represents, and Client agrees, as follows:

[Check all that apply.]

☐ Consultant has the right to perform services for others during the term of this Agreement subject to noncompetition provisions set out in this Agreement, if any.

☐ Consultant has the sole right to control and direct the means, manner, and method by which the services required by this Agreement will be performed.

☐ Consultant has the right to perform the services required by this Agreement at any

place or location and at such times as Consultant may determine.

☐ Consultant will furnish all equipment and materials used to provide the services required by this Agreement, except to the extent that Consultant's work must be performed on or with Client's computer or existing software.

☐ The services required by this Agreement will be performed by Consultant or Consultant's employees or contract personnel, and Client will not be required to hire, supervise, or pay any assistants to help Consultant.

☐ Consultant is responsible for paying all ordinary and necessary expenses of its staff.

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

☐ Neither Consultant nor Consultant's employees or contract personnel will be required to devote full time to the performance of the services required by this Agreement.

☐ Client will not withhold from Consultant's compensation any amount that would normally be withheld from an employee's pay.

6. Intellectual Property Ownership

[Choose Alternative A or B.]

☐ **ALTERNATIVE A**

"Work Product" includes, but is not limited to, the programs and documentation, including all ideas, formulas, object and source codes, specifications, flow charts, and other materials in whatever form, developed solely for Client under this Agreement.

Consultant hereby assigns to Client its entire right, title, and interest, including all patent, copyright, trade secret, trademark, and other proprietary rights, in the Work Product.

Consultant will, at no charge to Client, execute and aid in the preparation of any papers that Client may consider necessary or helpful to obtain or maintain—at Client's expense—any patents, copyrights, trademarks, or other proprietary rights. Client will reimburse Consultant for reasonable out-of-pocket expenses incurred under this provision.

[] **ALTERNATIVE B**

"Work Product" includes, but is not limited to, the programs and documentation, including all ideas, routines, object and source codes, specifications, flow charts, and other materials, in whatever form, developed solely for Client under this Agreement.

Client agrees that Consultant will retain any and all rights Consultant may have in the Work Product. Consultant hereby grants Client an unrestricted, nonexclusive, perpetual, fully paid-up, worldwide license to use and sublicense the use of the Work Product for the purpose of developing and marketing its products, but not for the purpose of marketing the Work Product separate from Client's products.

5. Consultant's Materials

"Consultant's Materials" means all programs and documentation, including routines, object and source codes, tools, utilities, and other copyrightable materials, that:

- do not constitute Work Product*
- are incorporated into the Work Product, and*
- are owned solely by Consultant or licensed to Consultant with a right to sublicense.*

Consultant's Materials include, but are not limited to, the following:

Consultant will retain any and all rights Consultant may have in Consultant's Materials. Consultant hereby grants Client an unrestricted, nonexclusive, perpetual, fully paid-up, worldwide license to use and sublicense the use of Consultant's Materials for the purpose of developing and marketing its products.

[Optional Clause: check if applicable]

[] **6. Confidential Information**

(a) Consultant's pledge of confidentiality, Work Product. Consultant agrees that the Work Product is Client's sole and exclusive property. Consultant will treat the Work Product on a confidential basis and not disclose it to any third party without Client's written consent, except when reasonably necessary to perform the services under this

Agreement.

(b) Consultant's pledge of confidentiality. Client's confidential and proprietary information. Consultant acknowledges that it will be necessary for Client to disclose certain confidential and proprietary information to Consultant in order for Consultant to perform duties under this Agreement. Consultant acknowledges that any disclosure to any third party or any misuse of this proprietary or confidential information would irreparably harm Client. Accordingly, Consultant will not use or disclose to others without Client's written consent Client's confidential information, except when reasonably necessary to perform the services under this Agreement.

(c) Scope of confidential information. Confidential information includes, but is not limited to:

- the written, printed, graphic, or electronically recorded materials furnished by Client for use by Contractor
- Client's business or marketing plans or strategies, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventions, documents, and communications of any kind
- any written or tangible information marked "confidential," "proprietary," or with a similar legend, and
- any written or tangible information not marked with a confidentiality legend, or information disclosed orally to Consultant, that is treated as confidential when disclosed and has been summarized sufficiently for identification purposes in a written memorandum marked "confidential" and delivered to Consultant within 30 days after the disclosure.

Consultant will not be restricted in the use of any material that is publicly available, already in Contractor's possession prior to commencement of Consultant's provision of services to Client, known to Consultant without restriction, or rightfully obtained by Consultant from sources other than Client.

Consultant's obligations regarding proprietary or confidential information extend to information belonging to customers and suppliers of Client about which Consultant may

have gained knowledge as a result of Consultant's services to Client.

Consultant will not disclose to Client information or material that is a trade secret of any third party.

The provisions of this clause will survive any termination of this Agreement.

[End Optional Clause]

8. Term of Agreement

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

- the date Consultant completes the services required by this Agreement
- 1/1/2012, or
- the date a party terminates the Agreement as provided below.

10. Termination of Agreement

Each party has the right to terminate this Agreement if the other party has materially breached any obligation herein and such breach remains uncured for a period of 30 days after notice thereof is sent to the other party.

If at any time after commencement of the services required by this Agreement, Client in its sole reasonable judgment, determines that such services are inadequate, unsatisfactory, no longer needed, or otherwise not conforming to the descriptions, warranties, or representations contained in this Agreement, Client may terminate this Agreement upon _____ days' written notice to Consultant.

11. Return of Materials

Upon termination of this Agreement, each party will promptly return to the other all data, materials, and other property of the other held by it.

12. Warranties and Representations

Consultant warrants and represents that:

- Consultant has the authority to enter into this Agreement and to perform all

obligations hereunder.

- The Work Product and Consultant's Materials are and will be free and clear of all encumbrances including security interests, licenses, liens, or other restrictions except as follows: _____
- The use, reproduction, distribution, or modification of the Work Product and Consultant's Materials does not and will not violate the copyright, patent, trade secret, or other property right of any former client, employer, or third party.
- For a period of _____ days following acceptance of the Work Product, the Work Product will be:
 - free from reproducible programming errors and defects in workmanship and materials under normal use, and
 - substantially in conformance with the product specifications.
- The Work Product will be created solely by Consultant, Consultant's employees during the course of their employment, or independent contractors who assigned all right, title, and interest in the work to Consultant.

13. Indemnification

Consultant agrees to indemnify and hold harmless Client against any claims, actions, or demands, including without limitation reasonable attorney and accounting fees, alleging or resulting from the breach of the warranties contained in this Agreement. Client will provide notice to Consultant promptly of any such claim, suit, or proceeding and will assist Consultant, at Consultant's expense, in defending any such claim, suit, or proceeding.

[Optional - check if applicable]

14. Assignment and Delegation

Consultant may not assign or subcontract any rights or obligations under this Agreement without Client's prior written approval.

[End Optional Clauses]

15. Insurance

Client will not provide any insurance coverage of any kind for Consultant or Consultant's employees or contract personnel. Consultant will maintain a broad form commercial general liability insurance policy providing combined single limits of not less than \$_____ per occurrence and \$_____ annual aggregate. Before commencing any work, Consultant will provide Client with proof of this insurance and that Client has been made an additional insured under the policy.

[Optional: Check and complete if applicable.]

☐ Consultant will obtain professional liability insurance coverage for multiplication of errors or omissions committed by Consultant or Consultant's employees or contract personnel during the term of this Agreement. The policy will provide for coverage of at least \$_____ for each occurrence and \$_____ annual aggregate. Before commencing any work, Consultant will provide Client with proof of this insurance. *[End option.]*

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.

17. Exclusive Agreement

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

18. Applicable Law

This Agreement will be governed by the laws of the state of _____.

19. 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 to the recipient delivers a written confirmation of receipt.

20. No Partnership

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A large, bold, dark gray watermark or stamp reading "NOLO" is oriented diagonally from the bottom-left towards the top-right. The letters are thick and sans-serif. The "NOLO" is positioned over the lower half of the form, partially obscuring the second set of fields.

A large, bold, dark gray watermark with the word "NOVO" is oriented diagonally from the bottom-left to the top-right, spanning across the center of the page. The letters are thick and sans-serif.

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