**CONTRACTOR AGREEMENT**

This CONTRACTOR AGREEMENT is between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Company”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) and is effective as of the date of the last signature below (the “Effective Date”).

# **Engagement**. During the term of this agreement, Contractor will provide services to the Company as described on Exhibit A hereto (the “Services”). Contractor represents that Contractor is duly licensed (as applicable) and has the qualifications, the experience and the ability to properly perform the Services. Contractor shall use Contractor’s best efforts to perform the Services such that the results are satisfactory to the Company. Contractor shall devote [at least] [\_\_\_\_\_% of Contractor’s time/\_\_\_\_\_ hours per week] to performance of the Services.

Contractor shall be solely responsible for determining the method, details and means of performing the Services. Contractor may, at Contractor’s own expense, employ or engage the services of such employees, subcontractors, partners or agents, as Contractor deems necessary to perform the Services (collectively, the “Personnel”). The Personnel are not and shall not be employees of the Company, and Contractor shall be wholly responsible for the professional performance of the Services by the Personnel such that the results are satisfactory to the Company.

All of the services to be performed by Contractor, including but not limited to the Services, will be as agreed between Contractor and the Company’s representative designated to Contractor in writing (the “Representative”). Contractor will be required to report to the Representative concerning the Services performed under this agreement. The nature and frequency of these reports will be left to the discretion of the Representative.

However, Contractor’s relationship with the Company will be that of an independent contractor and not that of an employee.

# **Fees and Expenses**. As consideration for the Services to be provided by Contractor and other obligations, the Company shall pay to Contractor the amounts specified in Exhibit B hereto at the times specified therein.

Contractor shall not be authorized to incur on behalf of the Company any expenses and will be responsible for all expenses incurred while performing the Services unless otherwise agreed to by the Company’s Representative, which consent shall be evidenced in writing for any expenses in excess of $100.00. As a condition to receipt of reimbursement, Contractor shall be required to submit to the Company reasonable evidence that the amount involved was both reasonable and necessary to the Services provided under this agreement.

# **Confidentiality**. Contractor will not (a) use Company’s Confidential Information except as needed to perform the Services or (b) disclose Company’s Confidential Information to any third party except (x) under an identical confidentiality restriction to the receiving party’s employees or Contractors who have a need to know Confidential Information in connection with the Services; or (y) when compelled by a court or other government agency (with as much advance notice to the disclosing party as reasonably possible). Contractor will treat Confidential Information in the same manner as its own confidential information, but with a minimum of a reasonable degree of care. “Confidential Information” means information that Company discloses to Contractor under this agreement and that is marked as confidential or would normally be considered confidential information under the circumstances, but does not include information that is independently developed by Contractor, is rightfully given to Contractor by a third party without restriction as to disclosure, or becomes public through no fault of Contractor.

# **Term and Termination**. Contractor shall serve as a contractor to the Company for a period commencing on the specified date (or if no date is specified, the Effective Date) and terminating on the date Contractor completes the provision of the Services to the Company under this agreement.

Notwithstanding the above, either party may terminate this agreement at any time upon 30 days’ written notice. In the event of such termination, Contractor shall be paid for any portion of the Services that have been performed prior to the termination.

Should either party default in the performance of this agreement or materially breach any of its obligations under this agreement, the non-breaching party may terminate this agreement immediately if the breaching party fails to cure the breach within 30 days after having received written notice by the non-breaching party of the breach or default.

Any provision of this agreement which, by its sense and context, was intended to survive termination of this agreement shall so survive.

# **Defense and Indemnity; Limitation of Liability**. Contractor agrees, to the fullest extent allowed by law, to defend and indemnify Company and any of its employees, officers, directors, and agents from and against any and all claims, demands, damages, or other liabilities, including reasonable attorneys’ fees, arising out of or related to Contractor’s negligence or willful misconduct or violation of applicable law.

Subject to the foregoing, NEITHER PARTY WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR (a) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES; or (b) EXEMPLARY OR PUNITIVE DAMAGES.

# **Other Provisions**.

### Force Majeure. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.

### Transfer of agreement. Neither party may transfer this agreement or any Purchase Order, except that either party may transfer all or any part of this agreement or a Purchase Order to (a) an Affiliate; or (b) a third party in connection with a merger or sale of substantially all the party’s assets. An “Affiliate” is an entity that is controlled by, in common control with, or controlling a party.

### Entire Agreement; Amendments and Waiver; Severability. This agreement, together with the Purchase Order, sets out all the terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this agreement, neither party has relied on, and neither party will have any right or remedy based on, any statement, representation, or warranty except those expressly set out in this agreement. Any amendment must be in writing, signed by both parties, and expressly state that it is amending this agreement, and neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this agreement. If any term (or part of a term) of this agreement is invalid, illegal or unenforceable, the rest of this agreement will remain in effect.

### Order of Precedence. The terms of the Purchase Order will take precedence over conflicting terms of this agreement to the extent of the subject matter of the Purchase Order.

### Governing Law; Venue. All claims arising out of or related to this agreement will be governed by Texas law excluding such State’s conflict of laws rules and will be litigated exclusively in the county or federal district/division of Company’s address for notice.

# **Notices**. Notices under this agreement are only effective when delivered in writing via certified mail or overnight delivery to the address for a party listed on the signature page hereto and with a copy to the email listed on the signature page, if any.

# **Signatures**. The parties may execute this agreement using electronic signatures, electronic copies, and counterparts.

[Signature Page Follows.]

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| --- | --- |
| **COMPANY:**    By:  Name:  Title:  Date:  Address for Notice: | **CONTRACTOR:**    By:  Name:  Title:  Date:  Address for Notice: |
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**EXHIBIT A**

Description of Services

**EXHIBIT B**

Fees