

## **EMPLOYMENT AGREEMENT WITH CONTRACTOR:**

### **CONTRACTOR CONTRACT**

THIS AGREEMENT is made as of \_\_\_\_\_[date] between \_\_\_\_\_("Client") and \_\_\_\_\_("Contractor").

In the event of a conflict in the provisions of any attachments hereto and the provisions set forth in this Agreement, the provisions of such attachments shall govern.

1. Services. Contractor agrees to perform for Client the services listed in the Scope of Services section in Exhibit A, attached hereto and executed by both Client and Contractor. Such services are hereinafter referred to as "Services." Client agrees that Contractor shall have ready access to Client's staff and resources as necessary to perform the Contractor's services provided for by this contract.

2. Rate of Payment for Services. Client agrees to pay Contractor for Services in accordance with the schedule contained in Exhibit B attached hereto and executed by both Client and Contractor.

3. Invoicing. Client shall pay the amounts agreed to herein upon receipt of invoices which shall be sent by Contractor, and Client shall pay the amount of such invoices to Contractor.

4. Confidential Information. Each party hereto ("Such Party") shall hold in trust for the other party hereto ("Such Other Party"), and shall not disclose to any non-party to the Agreement, any confidential information of such Other Party. Confidential information is information which relates to Such Other Party's research, development, trade secrets or business affairs, but does not include information which is generally known or easily ascertainable by non-parties of ordinary skill in computer systems design and programming.

Contractor hereby acknowledges that during the performance of this contract, the Contractor may learn or receive confidential Client information and therefore Contractor hereby confirms that all such information relating to the client's business will be kept confidential by the Contractor, except to the extent that such information is required to be divulged to the Contractor's clerical or support staff or associates in order to enable Contractor to perform Contractor's contract obligation.

5. Staff. Contractor is an independent contractor and neither Contractor nor Contractor's staff is or shall be deemed to be employed by Client. Client is hereby contracting with Contractor for the services described on Exhibit A and Contractor reserves the right to determine the method, manner and mean by which the services will be performed. Contractor is not required to perform the services during a fixed hourly or daily time and if the services are performed at the Client's premises, then Contractor's

time spent at the premises is to be at the discretion of the Contractor; subject to the Client's normal business hours and security requirements. Contractor hereby confirms to Client that Client will not be required to furnish or provide any training to Contractor to enable Contractor to perform services required hereunder. The services shall be performed by Contractor or Contractor's staff, and Client shall not be required to hire, supervise or pay any assistants to help Contractor who performs the services under this agreement. Contractor shall not be required to devote Contractor's full time nor the full time of Contractor's staff to the performance of the services required hereunder, and it is acknowledged that Contractor has other Clients and Contractor offers services to the general public. The order or sequence in which the work is to be performed shall be under the control of Contractor. Except to the extent that the Contractor's work must be performed on or with Client's computers or Client's existing software, all materials used in providing the services shall be provided by Contractor. Contractor's services hereunder cannot be terminated or cancelled short of completion of the services agreed upon except for Contractor's failure to perform the contract's specification as required hereunder and conversely, subject to Client's obligation to make full and timely payment(s) for Contractor's services as set forth in Exhibit B, Contractor shall be obligated to complete the services agreed upon and shall be liable for non-performance of the services to the extent and as provided in Paragraph 10 hereof. Client shall not provide any insurance coverage of any kind for Contractor or Contractor's staff, and Client will not withhold any amount that would normally be withheld from an employee's pay. Contractor shall take appropriate measures to insure that Contractor's staff is competent and that they do not breach Section 4 hereof.

Each of the parties hereto agrees that, while performing Services under this Agreement, and for a period of six (6) months following the termination of this Agreement, neither party will, except with the other party's written approval, solicit or offer employment to the other party's employees or staff engaged in any efforts under this Agreement.

6. Use of Work Product. Except as specifically set forth in writing and signed by both Client and Contractor, Contractor shall have all copyright and patent rights with respect to all materials developed under this contract, and Client is hereby granted a non-exclusive license to use and employ such materials within the Client's business.

7. Client Representative. The following individual \_\_\_\_\_ shall represent the Client during the performance of this contract with respect to the services and deliverables as defined herein and has authority to execute written modifications or additions to this contract as defined in Section 14.

8. Disputes. Any disputes that arise between the parties with respect to the performance of this contract shall be submitted to binding arbitration by the American Arbitration Association, to be determined and resolved by said Association under its rules and procedures in effect at the time of submission and the parties hereby agree to share equally in the costs of said arbitration.

The final arbitration decision shall be enforceable through the courts of the state of Contractor's address [15(ii)] or any other state in which the Client resides or may be located. In the event that this arbitration provision is held unenforceable by any court of competent jurisdiction, then this contract shall be as binding and enforceable as if this section 8 were not a part hereof.

9. Taxes. Any and all taxes, except income taxes, imposed or assessed by reason of this contract or its performance, including but not limited to sales or use taxes, shall be paid by the Client. Contractors shall be responsible for any taxes or penalties assessed by reason of any claims that Contractor is an employee of Client and Client and Contractor specifically agree that Contractor is not an employee of Client.

#### LIMITED WARRANTY

10. Liability. Contractor warrants to Client that the material, analysis, data, programs and services to be delivered or rendered hereunder, will be of the kind and quality designated and will be performed by qualified personnel. Special requirements for format or standards to be followed shall be attached as an additional Exhibit and executed by both Client and Contractor. Contractor makes no other warranties, whether written, oral or implied, including without limitation, warranty of fitness for purpose or merchantability. In no event shall Contractor be liable for special or consequential damages, either in contract or tort, whether or not the possibility of such damages has been disclosed to Contractor in advance or could have been reasonably foreseen by Contractor, and in the event this limitation of damages is held unenforceable then the parties agree that by reason of the difficulty in foreseeing possible damages all liability to Client shall be limited to One Thousand Dollars (\$1000.00) as liquidated damages and not as a penalty.

11. Complete Agreement. This agreement contains the entire agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Contractor by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Client acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein.

12. Applicable Law. Contractor shall comply with all applicable laws in performing Services but shall be held harmless for violation of any governmental procurement regulation to which it may be subject but to which reference is not made in Exhibit A. This Agreement shall be construed in accordance with the laws of the State indicated by the Contractor's address [15(ii)].

13. Scope of Agreement. If the scope of any of the provisions of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that

the whole of such provisions of this Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

14. Additional Work. After receipt of an order which adds to the Services, Contractor may, at its discretion, take reasonable action and expend reasonable amounts of time and money based on such order. Client agrees to pay Contractor for such action and expenditure as set forth in Exhibit B of this Agreement for payments related to Services.

15. Notices.

(i). Notices to Client should be sent to:

(ii). Notices to Contractor should be sent to:

16. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party. Except for the prohibition on assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefits of the heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first above written. THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

\_\_\_\_\_  
Client

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Type Name and Title