

## INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement ("Agreement"), dated the \_\_\_\_ day of \_\_\_\_\_ (the "**Effective Date**"), is by and between 3Degrees Group, Inc., a California Corporation with an address of 407 Sansome Street, Fourth Floor, San Francisco, California 94111, (hereinafter "Company") and [Insert name of Consultant], a [entity type and/or state of incorporation] with an address of [address], (hereinafter "Consultant"). 3Degrees and [Insert name of Consultant] are sometimes individually referred to as a "Party" and collectively referred to as the "Parties."

**1. Consulting Services.** The Company is in need of assistance at the \_\_\_\_\_ facilities and related matters. Consultant has agreed to perform consulting work for the Company in the activities for the Company outlined in the Statement of Work, which is included as Attachment A to this Agreement.

**2. Consideration.**

**a. RATE.** In consideration of the Consulting Services to be performed by Consultant under this Agreement, the Company will compensate Consultant by agreeing to pay Consultant

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**b. EXPENSES.** Unless otherwise agreed to in writing, any expenses incurred by Consultant for providing Consulting Services will be borne by Consultant.

**c. Payment Terms.** Consultant shall submit invoices which detail and itemize the work performed by Consultant, for Company, on the Schedule included in the Statement of Work, which is included as Attachment A to the Agreement. The Company shall pay Consultant for work performed which has been: (i) accepted by Company; (ii) properly invoiced to the Company; and (iii) if Consultant's work was performed pursuant to a professional services agreement that Company has executed with a third party, then the work performed must be accepted by said third party and Company must have been paid by said third party before Consultant becomes entitled to be paid by Company. After these requirements have been met, Company shall pay Consultant within thirty (30) days.

**3. Independent Consultant.** Nothing contained herein or any document executed in connection herewith, shall be construed to create an employer-employee, partnership or joint venture relationship between the Company and Consultant. Consultant is an independent contractor and not an employee or agent of the Company or any of its subsidiaries or affiliates. Consultant has no authority to, and will not, enter into contracts, make representations, warranties or commitments purporting to be binding on the Company or otherwise act on Company's behalf and shall not take any action that might lead third parties to believe Consultant has the right to do so. The consideration set forth in Section 2 shall be the sole consideration due Consultant for the services rendered hereunder. It is understood that the Company will not withhold any amounts for payment of taxes from the compensation of Consultant hereunder. Consultant will not represent to be or hold itself out as an employee of the Company and Consultant acknowledges that it shall not have any right or entitlement in or to any benefit program now or hereafter available to the Company's regular employees as a result of and with respect to the Consulting Services. Any and all sums subject to deductions, if any, required to be withheld and/or paid under any applicable state, federal or municipal laws or union or professional guild regulations shall be Consultant's sole responsibility and Consultant shall indemnify and hold the Company harmless from any and all damages, claims and expenses (including, but not limited to, attorneys' fees and costs) arising out of or resulting from any claims asserted by any taxing authority as a result of or in connection with said payments. In the event Consultant is deemed to be an employee, any such employment would be at-will, terminable for any reason, with or without notice.

**4. Ownership of Work Product.**

a. All deliverables, materials, information, inventions, designs, works of authorship, computer program code, audiovisual works, characters, music, sounds and other expressions or items accumulated, authored, made, conceived, developed or first reduced to practice by Consultant in its performance of the Consulting Services (collectively, the “Results”), together with all patent, copyright and other proprietary rights associated with ownership of such items, shall be the exclusive property of the Company and shall be promptly disclosed and furnished to the Company by Consultant. To the full extent permitted by applicable law, such Results shall be “work made for hire.” To the extent any Results are not “work made for hire”, Consultant hereby assigns to the Company, without separate compensation, all right, title and interest in and to the Results together with all associated United States and foreign patent, copyright, trade secret and other proprietary rights including, without limitation, the rights of registrations and renewal. In addition, Consultant hereby waives and releases any and all moral rights and rights of restraint that Consultant may possess in or to any Results.

b. Consultant shall take, at the Company’s expense, all actions during or after the performance of the Consulting Services reasonably requested by the Company for the implementation of this Section 4 or to evidence, perfect or protect the Company’s ownership of the Results and associated proprietary rights (including, without limitation, the execution, acknowledgment and delivery of instruments of conveyance, copyright, patent, trademark or other proprietary right registration applications or other documents).

## **5. Consultant Representations.**

a. All work will be done in a competent and timely fashion in accordance with applicable standards of both the Company’s and Consultant’s profession.

b. Staff time shall be utilized at its highest and best use;

c. Services must be assigned to personnel who have the appropriate level of expertise;

d. Fee generating personnel shall not perform clerical work (e.g. copying and filing);

e. Company will not be billed for personnel training or duplicative efforts caused by staffing changes;

f. Company shall have the right to make purchases directly for any applicable out-of-pocket expenses incurred in connection with the performance of this project exceeding \$250; and

g. In the event of a material change to the project team, Company reserves the right to terminate for convenience without penalty.

**6. Confidential Information.** Consultant agrees that it will hold secret and confidential all proprietary information and trade secrets of the Company, its subsidiaries, affiliates and customers learned by Consultant in any manner during his previous employment with the Company and the term of this Agreement including, without limitation, all business plans, market data and information, reports and analyses, or any other confidential or secret aspects of the business of the Company or any of its subsidiaries, affiliates or customers. Consultant agrees to return all data and information provided by the Company and any and all reports and analyses compiled by Consultant therefrom, to the Company upon its request, and in any event upon termination of this Agreement, and to erase all portions thereof from Consultant's computer memory. This confidentiality provision shall survive termination of this agreement, and if the Parties hereto have previously entered into a separate confidentiality agreement, the terms and provisions of this Section 6 shall be construed in a manner consistent with the provisions of such prior agreement, which shall remain in

full force and effect. To the degree the Company provides company information or property, Consultant agrees to return all information and property to the Company at the end of this Agreement, or as requested by Company.

**7. Nonsolicitation/Noncompetition.** During and after the course of Consultant's performance of the Consulting Services, Consultant will not, directly or indirectly:

- a.** make statements or take actions which solicit, divert, take away or attempt to solicit, divert or take away any customers of the Company;
- b.** respond to Requests For Proposals ("RFPs") or bid on contracts which Company has informed Consultant of, unless Consultant (1) had preexisting business relationship with the Party to whom the RFP response is addressed, (2) was aware of the existence of the opportunity which the RFP proposal or bid is in response to, and (3) had already taken substantial steps towards the completion of the specific RFP proposal or bid prior to Consultant's being informed of the opportunity by Company;
- c.** make statements or take actions which disparage the reputation of the Company;
- d.** persuade or entice, or attempt to persuade or entice any employee or other consultant of the Company to terminate his or her employment or service relationship with the Company; or
- e.** persuade or entice, or attempt to persuade or entice any person or entity to terminate, cancel, rescind or revoke its business or contractual relationships with the Company, in whole or in part. The covenants contained in (a) shall remain in effect during the course of Consultant's performance under this Agreement and subsequent agreements for a period of one (1) year thereafter. All other covenants contained in this Section 7, shall remain in effect permanently.

**8. Reasonability and Enforcement of Sections 6 and 7.**

**a.** The Company and Consultant stipulate that, in light of all of the facts and circumstances of the relationship between Consultant and the Company, the agreements referred to in Sections 6 and 7 (including without limitation their scope, duration and geographic extent) are fair and reasonably necessary for the protection of the Company's confidential information, goodwill and other protectable interests. If a court of competent jurisdiction should decline to enforce any of those covenants and agreements, Consultant and the Company request the court to reform these provisions to restrict Consultant's use of confidential information, nonsolicitation, ability to compete with the Company, and any other covered topics to the maximum extent, in time, scope of activities, and geography, the court finds enforceable under applicable federal and state law.

**b.** Consultant acknowledges the Company will suffer immediate and irreparable harm that will not be compensable by damages alone if Consultant repudiates or breaches any of the provisions of Sections 6 or 7 or threatens or attempts to do so. For this reason, under these circumstances, the Company, in addition to and without limitation of any other rights, remedies or damages available to it at law or in equity, will be entitled to obtain temporary, preliminary and permanent injunctions in order to prevent or restrain the breach, and the Company will not be required to post a bond as a condition for the granting of this relief. Consultant also agrees that a violation of any of Sections 6 or 7 would entitle the Company, in addition to all other remedies available at law or equity, to recover from Consultant any and all funds, including, without limitation, wages and salary, which will be held by Consultant in constructive trust for the Company, received by Consultant in connection with such violation.

**c.** These Sections will survive termination of this Agreement. Consultant represents that if this Agreement is terminated, whether voluntarily or involuntarily, Consultant has experience and

capabilities sufficient to enable Consultant to perform services or obtain employment in areas which do not violate this Agreement and that the Company's enforcement of a remedy by way of injunction will not prevent Consultant from earning a livelihood.

**9. Ability to Perform Services/Third-Party Trade Secrets.** Consultant affirms that Consultant is not restricted from providing services in this Agreement due to any agreement with any other person or entity. Consultant will not disclose to Company or use in its work any trade secrets, inventions or confidential information of any other person or entity which Consultant is not lawfully entitled to disclose or use.

**10. Business Opportunities.** Consultant will promptly disclose to the Company any business opportunity of which Consultant becomes aware as a result of his performance of the Consulting Services. Consultant will not take advantage of or divert any such opportunity for the gain, profit or benefit of Consultant or any other person or entity without the written consent of the Company.

**11. Time of Work.** Consultant shall have control over the times at which Consultant performs services. Consultant shall use reasonable efforts to complete the Consulting Services by any deadlines imposed by the Company.

**12. Term.** This Agreement shall commence on \_\_\_\_\_, and shall terminate on \_\_\_\_\_, provided that the term shall be extended until the Parties have completed all obligations they have under a Statement of Work. The Parties may terminate this Agreement upon the execution of any new agreement between the Parties which expressly supersedes this Agreement.

**13. Termination for Convenience.** Company may terminate this Agreement at any time, for any reason, upon written notice to the other Party. Upon termination by either Party, Consultant shall return to Company all of Company's property, whether physical or intellectual. Upon the completion of the next regularly scheduled billing cycle, Company shall pay Consultant for all work which has been performed, and accepted by Company.

**14. Termination for Cause.** In the event that a Party breaches any of the covenants or warranties under this Agreement, the non-breaching Party may terminate the Agreement immediately upon written notice to the other Party. Upon termination by either Party, Consultant shall return to Company all of Company's property, whether physical or intellectual. Upon the completion of the next regularly scheduled billing cycle, Company shall pay Consultant for all work which has been performed, and accepted by Company.

**15. Consultant's Taxpayer I.D. Number and Business Permits.** The taxpayer I.D. number of the Consultant is \_\_\_\_\_. The Consultant is qualified to perform the agreed upon services enumerated herein and covenants that it maintains all valid licenses, permits and registrations required by law to perform same. Consultant shall be responsible for obtaining any workers' compensation or unemployment insurance required by law.

**16. Liability.** The work to be performed under this Agreement will be performed entirely at Consultant's risk, and Consultant assumes all responsibility for the condition of equipment and facilities used in the performance of this agreement.

**17. Legal Right.** Consultant covenants and warrants that Consultant has the unlimited legal right to enter into this Agreement and to perform in accordance with its terms without violating the rights of others or any applicable law and that it has not and shall not become a Party to any other agreement of any kind which conflicts with this Agreement.

**18. No Waiver.** Failure to invoke any right, condition, or covenant in this Agreement by either Party shall not be deemed to imply or constitute a waiver of any rights, condition, or covenant and neither Party may rely on such failure.

**19. Notice.** Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered, or sent by certified or registered mail, properly addressed to the appropriate Party at the address set forth below:

1. Notices as to Consultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Notices to the Company:

3Degrees Group, Inc.  
ATTN: Contract Management  
407 Sansome Street  
Fourth Floor  
San Francisco, CA 94111

**20. No Assignment or Delegation.** This Agreement is personal to Consultant and may not be assigned or delegated by either Party, in whole or in part, to anyone at anytime without the Company's prior written consent. Consultant may not delegate or assign any Consulting Services to any employee or independent contractor.

**21. Enforceability.** If any provision of this Agreement is held by a court or regulatory body of competent jurisdiction to be unenforceable, the remainder of the Agreement shall remain in full force and effect and shall in no way be impaired.

**22. Nonexclusion.** It is understood that Company does not agree to use Consultant exclusively. Likewise, Consultant is free to contract for services to be performed for other firms while under contract with Company, subject to the terms of this Agreement.

**23. Responsibilities of Consultant.** Consultant assumes responsibility for its personnel, if any, providing services hereunder and will make all deductions required of employers by state, federal, and local laws, including deductions for social security and withholding taxes, and contributions for unemployment compensation funds, and shall maintain workers compensation and liability insurance for each of them. Consultant covenants to hold Company harmless from any and all liability for withholding state or federal income tax, federal or state industrial accident contributions, and any employer's tax liability now or subsequently imposed on Consultant. Consultant agrees that all services under this agreement shall be conducted in full compliance with any and all applicable laws and governmental rules and regulations, both state and federal. Consultant assumes and agrees to pay any and all gross receipts, compensating, use, transaction, sales, or other taxes or assessments of whatever nature or kind levied or assessed as a consequence of the work to be performed or with respect to the compensation to be paid under this agreement.

**24. Miscellaneous.**

**a. Entire Agreement and Amendments.** This Agreement constitutes the entire agreement of the Parties with regard to the subject matter hereof, and replaces and supersedes all other agreements or understandings, whether written or oral. No amendment or extension of this Agreement shall be binding unless in writing and signed by both Parties hereto.

**b. Governing Law/Venue.** This Agreement is governed by and construed in accordance with the laws of the State of California without regard to its conflict of laws principles. All disputes relating to this Agreement will be resolved by binding arbitration in accordance with the rules of the American Arbitration Association and any such arbitration will take place in San Francisco, California. Either Party shall have the right to commence arbitration by written notice to the other Party after the expiration of a 30 day negotiation period. The Parties agree that any determination by the arbitrator(s) will be final and binding and that judgment upon the award may be entered in any court having competent jurisdiction. The Parties agree that the arbitrator(s) will have no authority to award punitive damages.

**c. Equal Opportunity Contract.** Consultant is committed to the provisions outlined in the Equal Opportunity Clauses of Executive Order 11246, (41 CFR 60-1.4), section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a)), section 402 of the Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-250.5(a)), and, the Jobs for Veterans Act of 2003, (41 CFR 60-300.5(a)) as well as any other regulations pertaining to these orders.

**c. Indemnification.** Each Party agrees to protect, defend, indemnify, and hold the other Party and its officers, employees and agents harmless from and against all losses, costs, damages, injuries, penalties, claims, or liabilities of any nature, including bodily injury or physical damage to property, caused by or arising out of negligence or willful misconduct of the such Party or its officers, employees and agents.

**d. Execution.** This Agreement may be executed via facsimile and in counterparts, which together shall constitute the single Agreement.

**WHEREFORE**, the Parties have executed this Agreement as of the date written above.

**COMPANY:**

**3Degrees Group, Inc.**

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

Name: \_\_\_\_\_

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

**CONSULTANT:**

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

Name: \_\_\_\_\_

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

## Attachment A

### Statement of Work

This Statement of Work is executed by 3Degrees Group, Inc. (“3Degrees”) and \_\_\_\_\_ (“Consultant”) pursuant to the Independent Contractor Agreement by and between 3Degrees and Consultant dated \_\_\_\_\_ (the “Agreement”). In the event of a conflict between this Statement of Work and the Agreement, the terms of this Statement of Work will prevail.

#### Client:

Company Name, name of Project

#### Project Description:

Short description of project

Consultant will be expected to deliver on this statement of work within the time frames indicated after signing this contract in order to allow 3Degrees to assimilate the deliverables into its required efforts.

#### Services

[Copy information directly from Consultant’s proposal or 3Degrees’ proposal to the Client)

#### Project Schedule

	Description	Budget	Due Date
Project Start			
Deliverable 1			
Deliverable 2			
Deliverable 3			

#### Budget

Consultant will deliver the aforementioned Scope of Work for Client comprehensively for a total budget not to exceed \$XX,XXX.

The billing will be billed on time and materials actually worked for services rendered. This budget includes all labor and direct costs.

**3DEGREES GROUP, INC.**

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

Printed Name: \_\_\_\_\_

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

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

**CONSULTANT:**

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

Printed Name: \_\_\_\_\_

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

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