

Independent Contractor Agreement

This is an Independent Contractor Agreement (“Agreement”) dated as of _____, 20____ between _____, a [California nonprofit corporation] (“Client”), and _____, a _____ (“Contractor”).

Background

Client is a nonprofit organization whose mission is *[insert mission]*. Contractor is an independent individual or entity. It is engaged in the business of providing services to third parties of the nature described in the Scope of Work contemplated by Section 1.1 of this Agreement. Client wishes to retain Contractor for such services on the basis set out in this Agreement.

1. Services and Fees

1.1 Services

Contractor will perform services (“Services”) for Client as described in the Scope of Work (“SOW”) attached as **Exhibit A**.

1.2 Fees

The fees specified in the SOW will be Contractor’s sole compensation for the Services. Contractor will be responsible for Contractor’s own expenses unless otherwise specified in the SOW. Contractor will submit invoices as specified in the SOW. Contractor will, in each invoice, include sufficient information to support the invoiced work, and will provide any other such data Client may request. Unless otherwise provided in the SOW, Client will pay invoices within 30 days of receipt.

1.3 Contractor Control

Contractor will do the work necessary to carry out and complete the Services in a timely manner consistent with applicable law, professional standards, and this Agreement. Contractor will have sole discretion over, and sole responsibility for, the planning, method, means, sequencing, time, and place of the work. Contractor will provide Contractor’s own equipment and materials. Contractor will advise Client in writing if it intends to subcontract any part of the Services.

1.4 Scope Changes

If either Client or Contractor believes the SOW should be adjusted in any respect, it will advise the other of the proposed changes. Client and Contractor will discuss the proposed adjustment and, if they agree on an adjustment, confirm and document the adjustment in a written change order (“Change Order”) substantially in the form attached as **Exhibit B**. Client will not be responsible for additional fees beyond that set out in the SOW except as provided in a signed Change Order.

2. Work Product and Confidentiality

2.1 Ownership of Work Product

Contractor and Client intend that Client will have full and exclusive rights to all work product created by Contractor or provided to Client under this Agreement (collectively, “Work Product”). Accordingly, Contractor: (a) assigns to Client all rights, title, and interest worldwide in the Work Product; (b) grants to Client an irrevocable, exclusive, royalty-free, perpetual, and worldwide license to any rights in the Work Product that cannot be assigned to Client; and (c) waives enforcement against Client of any rights in the Work Product that cannot be assigned or licensed to Client. Contractor will assist Client in obtaining and enforcing these rights in the Work Product.

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2.2 No Infringement

Contractor warrants and will ensure that Work Product does not and will not violate, infringe, or misappropriate any copyright, right of privacy, right of publicity, trademark, trade name, trade secret, or other common law or statutory intellectual property or other right of any nature of any third party.

2.3 Third-Party Proprietary Information

In carrying out Services, Contractor will not use or disclose information, trade secrets, or property of any former employer or other third party in violation of any agreements with that former employer or third party, or otherwise in violation of applicable law.

[2.4 No Obligation to Use

Client is under no obligation to use any Work Product in any manner. Client will have fully discharged its obligations through its payments to Contractor as contemplated by Section 1.2.]

2.5 Confidentiality

Contractor will use Confidential Information (as defined below) only in connection with Contractor's activities under this Agreement and keep it confidential. "Confidential Information" means all information, in any form, furnished to or obtained by Contractor from Client including, without limitation, strategy, planning, budgeting, fundraising, client, and employee information. It does not include information which: (a) is or becomes generally available to the public other than as a result of a disclosure by Client; (b) was known by Contractor prior to its being furnished by Client; (c) is or becomes available to Contractor on a non-confidential basis from a source other than Client; or (d) is independently developed by Contractor.

2.6 Publicity

Contractor will not use any of Client's trademarks or identify Client as a client in any promotional, advertising, or other material, or in any website, press release, or public communication, without the prior written consent of Client.

3. Interactions with Client

3.1 Access to Facilities

Client may provide Contractor with access to Client's facilities as needed for performing Services. In that case, and unless otherwise agreed given the nature of the Services, Contractor will comply with Client's security, conduct, and other facility use policies.

3.2 Access to Other Property

Client may provide Contractor with access to Client information technology systems, software, methodologies, documents, and other infrastructure and materials as needed for performing Services. In that case, and unless otherwise agreed given the nature of the Services, Contractor will comply with Client's information security, system use, privacy, and other policies.

3.3 Harassment and Discrimination

In carrying out Services, Contractor will not harass, discriminate, retaliate, or be abusive toward any Client employee or other person at Client including, without limitation, engaging in any verbal, physical, written, or visual harassment, discrimination, or retaliation on the basis of race, religious creed, color, national origin, disability, sex, gender identity, gender expression, age, sexual orientation, or other characteristic protected by the law.

[3.4 Reporting

Client encourages Contractor to report to Client if Contractor believes it is the subject of conduct set out in Section 3.3, or if Contractor sees such incidents involving others in the Client community. Contractor may report such conduct to the Client contact person named in the SOW or to Client's Executive Director.]

[3.5 Non-solicitation

Contractor will not solicit or recruit any Client employee, either for Contractor or on behalf of any other person or entity, during the term of this Agreement or for 12 months following the termination of this Agreement.]

4. Contractor Relationship, Taxes, and Contributions

4.1 Contractor Relationship

Contractor is and will be an independent contractor. Nothing in this Agreement creates an employment, partnership, joint venture, fiduciary, or similar relationship between Contractor and Client for any purpose. This Agreement is not an exclusive arrangement. Contractor and Client are free to do business with others.

4.2 No Entitlement to Employee Benefits

Contractor will not be entitled to or eligible for any benefits that Client makes available to Client's employees, including, without limitation, coverage under any Client medical, dental, liability, automobile, or other insurance policies. Contractor waives any rights or claims to those benefits.

4.3 Taxes and Contributions

Contractor will have sole responsibility for all tax returns and payments required by any federal, state, or local tax authority, and for paying all disability, unemployment insurance, workers' compensation contributions, and any other contributions and expenses that may be required in connection with Contractor's performance of the Services and receipt of fees under this Agreement. Contractor understands that Client will not withhold income, social security, or Medicare taxes, make unemployment or disability insurance contributions, or obtain workers' compensation or other insurance on Contractor's behalf.

5. Insurance, Indemnification, and Remedies

5.1 Contractor Insurance

If requested by Client, Contractor will obtain insurance and proof of insurance as described in the SOW.

5.2 Indemnification by Contractor

Contractor will defend, indemnify and hold Client, and its directors, officers, employees, agents, and assigns (collectively, the "Client Parties"), harmless against all claims, liabilities, losses, damages, and expenses any Client Party may suffer and which arise directly or indirectly from: (a) Contractor's performance of the Services under or breach of Agreement; (b) any claims by employees, clients, subcontractors, suppliers, creditors or other persons in a relationship with Contractor; (c) any claims of infringement, misappropriation, or otherwise by third parties regarding Work Product; or (d) any claims related to tax, insurance contributions, workers' compensation law, or other laws applicable to Contractor. Contractor will have no obligation to indemnify any Client Party to the extent the liability is solely caused by such Client Party's gross negligence or willful misconduct.

[5.3 Limitation of Liability

Client will not be liable to Contractor for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or otherwise related to this Agreement. Client's total liability to Contractor under this Agreement will in no case exceed the fees payable by Client to Contractor under the SOW.]

[5.4 Injunctive Relief

Contractor acknowledges and agrees that: (a) any breach by Contractor of its obligations under Sections 2.1 or 2.5 will result in irreparable harm to Client which cannot be reasonably or adequately compensated in damages; (b) Client will be entitled to injunctive or other equitable relief in respect of such breach or imminent

breach; and (c) Client will have all other rights and remedies to which it is entitled, at law or in equity, with respect to breach of Sections 2.1 or 2.5, and otherwise with respect to the enforcement of all rights relating to the establishment, maintenance, or protection of Client's intellectual property and Confidential Information.]

6. Termination

6.1 Termination upon Notice

Client may terminate this Agreement at any time by giving written notice of termination to Contractor. Such a termination will be effective 30 days after delivery of such notice.

6.2 Termination for Breach

Either Contractor or Client may terminate this Agreement upon a material breach by the other. Such a termination will be effective 10 days after delivery of a written notice to that effect.

[6.3 Termination by Reason of Certain Events

Client may terminate this Agreement by giving written notice to Contractor in the event Contractor dies or becomes incapacitated or, if a business entity, commences any proceeding under any bankruptcy or insolvency law, dissolves, liquidates, or ceases to engage in its operations. Such a termination will be effective upon delivery of such notice by Client.]

[6.4 Termination for Conduct

Client may immediately terminate this Agreement by giving written notice to Contractor if it reasonably believes that the Contractor has engaged or is engaging in conduct, or has been alleged to have engaged in conduct, including, without limitation, conduct involving harassment or discrimination, of a nature which reflects or could reflect materially and unfavorably upon the reputation of Client. Such a termination will be effective upon delivery of the notice by Client.]

6.5 Consequences of Termination

If this Agreement is terminated under Sections 6.2, 6.3, or 6.4, then Contractor will be entitled only to compensation for Services performed through the effective date of termination, less the amount of any claims by Client arising out of such termination, including, without limitation, claims for damages and transition costs. Client will not be liable for any further payment. Contractor will also return any advances or other amounts previously paid by Client, if any, not attributable to Services performed prior to the effective date of termination. Client will pay undisputed fees within 30 days after the later of receiving Contractor's invoice or the effective date of termination.

6.6 Return of Materials; Survival

Upon termination of this Agreement, Contractor will, at Client's request, promptly return all documents, materials, records, and equipment that Client may have provided to Contractor. Client will retain sole ownership of these items and other property which Client may have made available to Contractor. The provisions of Sections 2.1, 3.5, 4.3, 5.2 – 5.4, 6.5, 6.6, 6.7, and 7 will remain effective after termination.

7. General Provisions

7.1 Entire Agreement

This Agreement, together with its exhibits, expresses the final, complete, and exclusive agreement between Contractor and Client, and supersedes any and all prior or contemporaneous written and oral agreements, arrangements, negotiations, communications, course of dealings, or understandings between Contractor and Client. If there are any inconsistencies between any exhibit and this Agreement, this Agreement will control.

7.2 Amendment

This Agreement may be amended only as stated in and by a writing signed by both Contractor and Client which recites that it is an amendment to this Agreement.

7.3 Severability

If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

7.4 Waiver

Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

7.5 Assignment

Contractor may not assign its rights or delegate its duties under this Agreement to anyone else without the prior written consent of Client.

7.6 No Third-Party Beneficiaries

Except as provided in Section 5.2, this Agreement is for the exclusive benefit of Contractor and Client and not for the benefit of any third party, including, without limitation, any employee, affiliate, subcontractor, or vendor of Contractor or Client.

7.7 Notices

Notices and consents under this Agreement must be in writing and delivered by mail, hand delivery, fax, or e-mail to the contact persons set out in the SOW. These addresses may be changed by written notice to the other party.

7.8 Governing Law; Jurisdiction

This Agreement will be governed by California law. Contractor and Client consent to the exclusive jurisdiction of the state and federal courts for _____ County, California.

7.9 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.

* * * * *

This Agreement was signed by Client and Contractor as of the date stated in its first paragraph:

[insert legal name of Client]

[insert legal name of Contractor]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A
Scope of Work

Contractor data and contact person

Name	
Address	
Telephone	
Website	
Contact person	Name: Title: E-mail: Telephone:
Key project staff contact information	
EIN (if applicable)	

Client project leader

Client address	
Principal contact person	Name: Title: E-mail: Telephone:

Services

Project start date	
Project completion date	
Project budget (if applicable)	
Description	

Fees

Fees	
Invoicing	<i>[state invoicing requirements]</i>

Contractor insurance (if applicable)

Contractor insurance requirements	<i>[state insurance requirements]</i>
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Other terms (if applicable)

Other terms	<i>[state other terms]</i>
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This document is a Statement of Work (“SOW”) contemplated by Independent Contractor Agreement, dated _____, 20_ (the “Agreement”), between [name of Client] and [name of Contractor]. Terms and conditions of the Agreement are applicable and incorporated into this SOW.

Agreed and confirmed as of the date stated above in this SOW.

[insert legal name of Client]

[insert legal name of Contractor]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

Defend Trade Secrets Act Notice: An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal; and does not disclose the trade secret, except pursuant to court order.

Exhibit B
Form of Change Order

Original contract date	
Change Order date	
Reason for change in Services	
Modified Services (if applicable)	
Modified timeframe (if applicable)	
Modified fee terms (if applicable)	

This document is a Change Order contemplated by the Independent Contractor Agreement, dated _____, 20__, between [name of Client] and [name of Contractor].

Agreed and confirmed as of the date stated above in this Change Order:

[insert legal name of Client]

[insert legal name of Contractor]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____