Independent Contractor/Vendor Agreement

Contracting Process:

1. **Negotiate the contract terms and conditions with the vendor.**
   A. Prepare for the negotiation.
      Spell out what you and your vendor have agreed upon regarding the services of the vendor and your responsibilities. Typical subsections of a contract are:
      - Bidding
      - Costs and Equipment
      - Confidentiality Agreement
      - Ownership
      - Invoices
      - Communications
      - Reporting
      - Review & Acceptance
      - Timeliness
      - Insurance Verification
      - Attendance at Meetings
      - Back-up

      Review these guidelines, then review the vendor proposal to see if there will be major discrepancies. If so, prepare to present your position to the vendor.

   B. Conduct the negotiation.
      Meet with the vendor, review the issues, and obtain agreement.

2. **Prepare the contract and get it signed by legal and the vendor.**
   A. Obtain a sample contract from your Legal/Finance department.
   B. Review the sample contract and substitute the particular terms and conditions that fit your project as negotiated with the vendor.
   C. Present the completed contract to the vendor for approval.
   D. Have the contract amended and proofed and then send it to your Legal department for approval.

3. **Establish Purchase Order and invoicing processes.**

Sample Agreement

This agreement (the "Agreement") effective as of _____, 2001(the "Effective Date") between **[name & address of client]** (hereafter "Client") and **[name & address of vendor]** (hereafter the "Contractor");

WHEREAS, the Client **[description of work]** in accordance with (1) the Statement of Work (SOW) annexed to the Agreement as Exhibit A, and (2) the terms and conditions set forth in the Agreement; and

WHEREAS, Contractor is willing to provide such services in accordance such terms and conditions;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the parties hereto hereby agree as follows:

1. The Client hereby engages Contractor, and Contractor hereby accepts such engagement, upon the terms and conditions set forth herein, for the period commencing on the Effective Date specified in the SOW and ending upon the Client's acceptance of the Contractor's services and deliverables, unless earlier terminated pursuant to the terms of this Agreement.

2. Contractor shall perform the services set for in the SOW (hereinafter, the "Services")

and deliver the deliverables described in the SOW (hereinafter the “Deliverables”) in accordance with the timeline set forth in the SOW. Any changes to the SOW which will impact the cost of the project or change the time line, must be accomplished through a change order, using the form annexed to the agreement as Exhibit B, signed by both parties.

3. As complete compensation for the Services and Deliverables, the Client will pay contractor the sum of **[amount and conditions of payment]**.

4. In performing all aspects of the Services, Contractor shall coordinate and consult regularly with **[administrator of the agreement]**, or a designee thereof.

5. Promptly after completion of each component of the Services/Deliverables, the Client will review, and where appropriate, test the component for conformity to the specifications and warranties contained in the Agreement. If the component so conforms, the Client will notify the Contractor accordingly (“Acceptance”). If the Client claims that there is a failure to conform to such specifications and/or warranties, the Client shall promptly notify Contractor of such nonconformance and Contractor will promptly take all steps necessary to effect conformance.

6. Each party acknowledges that the timeline is contingent upon timely completion of each phase by each party. Each party will report delays or anticipated delays as they occur and will make every reasonable effort to correct the situation.

7. In performing the Services, Contractor is an independent contractor, and not an employee of the Client, nor are any of Contractor’s employees or contract personnel employees of the Client. Contractor shall have the right to perform services for others and the sole right to control and direct the means, methods and manner by which the Services required hereunder will be performed, consistent with the terms of this Agreement. Contractor shall not be entitled to any fringe benefits, including health insurance, benefits, paid vacation, or other employee benefits provided by the Client to its employees. Contractor is responsible for payment of any taxes, withholdings and any other statutory or contractual obligations of any sort, in connection with services provided hereunder. Contractor has no authority to create or assume any obligation on behalf of the Client, or to hold itself out as having such authority, without the prior written consent of the Client.

8. All materials delivered to the Client by the Contractor shall become the property of the Client, unless the parties agree otherwise in a signed contract. The Services will be provided on a “work for hire” basis, and the materials produced under the Agreement, including without limitation, the Deliverables, shall be deemed “works made for hire” as that term is defined under the U.S. copyright laws, of which the Client is the sole author and owner. To the extent, if any, that Contractor may be deemed the author of any portion of the Services and/or Deliverables, Contractor hereby fully and irrevocably assigns, transfers, conveys and relinquishes all rights, title and interest therein, including, without limitation, all copyrights, to the Client, and grants the Client a power of attorney coupled with an interest, to apply for and obtain all such copyrights in the Client’s name. The duration shall be for the life of the copyright in the Services and/or Deliverables, and all renewals and extensions thereof. Further, Contractor shall have no right to attach its name or trademarks, logos or trade names to the Services or Deliverables. The provisions in this Section shall survive any termination of this Agreement. The existence of any claim or cause of action by the Contractor against the Client shall not constitute a defense to the enforcement by the Client of the covenants and agreements of this Section.

9. It is understood that in the course of the Contractor's performance hereunder Contractor may become privy to information relating to the Client’s operations, employees, finances, projects, products and production plans, research and development, system design,

software, hardware, technical processes and formulas, source codes, activities, and so on. Such information shall be deemed confidential in every case where either a reasonable person would understand it to be confidential or the Client has identified it as such, unless the information in question (i) was already known to Contractor prior to its first disclosure hereunder; (ii) has become generally known to the public through no fault of the Contractor's; or (iii) is required by law to be disclosed (in which case the Contractor shall provide the Client with a reasonable opportunity to seek a protective order maintaining confidentiality). Contractor shall maintain the secrecy of all of the Client's confidential information (including, without limitation, all confidential information that the Client has received or will receive from third parties), using the same care it applies to its own confidential information, and shall make use of such confidential information only to the minimum extent necessary to effect the Agreement. Contractor shall not exploit or reveal to any third party any of such information without the Client's express prior written consent. This provision shall apply to all confidential information, whether it was exchanged before or after the date of this Agreement. All confidential information referred to in this Section in whatever form shall at all times remain the property of the Client, and shall, upon written request of the Client, be delivered by Contractor to the Client in all tangible forms, or, promptly destroyed by Contractor to the extent such delivery is impracticable.

10. Representations and Warranties:

    (a) Contractor represents and warrants that the Deliverables and the Services will be performed in a good workmanlike manner, by competent personnel, and in accordance with applicable professional standards, and that the Deliverables will perform in accordance with the specifications provided to Contractor by the Client. If any element of the Services does not conform to the foregoing warranty, the Client shall notify the Contractor in writing of such nonconformance, and Contractor shall re-perform such element in a manner that does conform.
    (b) Contractor represents and warrants that its provision of Services and delivery of the Deliverables hereunder will not infringe any United States patent existing on the Effective Date or any copyright or trade secret which is protected under United States law.
    (c) Contractor represents and warrants that Contractor's signing of this Agreement and the performance of Contractor's Services hereunder is not and will not be in violation of any other contract, agreement or understanding to which Contractor is a party or by which Contractor is bound.

11. During the Term, and subject to the terms and conditions set forth in this provision, Contractor may not reference the Client as a client in press releases, case studies or any other promotional materials (the "Promotional Materials"), unless, prior to printing, electronic publication, or any other dissemination or display of the Promotional Materials: (i) Contractor advises the Client of all uses it plans to make of the Promotional Materials; (ii) Contractor submits the Promotional Materials to the Client for review, and (iii) after such review, Contractor receives written approval from the Client authorizing it to produce and/or distribute and/or publish the Promotional Materials, in compliance with any further limitations that the Client may require. Contractor may not use the Client's name, trademarks and logos other than as set forth in, and in accordance with, this Section.

12. This Agreement shall be governed by the laws of the State of New York, and any dispute arising hereunder shall be resolved in the courts of the State of New York, County of New York.

13. Neither party may transfer or assign this Agreement, in whole or in part, in any manner whatsoever without the prior written consent of the other.

14. If any term or other provision of this Agreement, or any application thereof to any circumstance is invalid, illegal or incapable of being enforced by any rule of law, or public policy in whole or in part, such provisions or applications shall to that extent be severable and shall not effect other provisions or applications of this Agreement.

15. This Agreement contains a complete statement of all arrangements between the parties relating to its subject matter, supercedes any previous arrangements or understandings, whether written or oral, and may only be changed by a written agreement signed by the parties hereto.

AGREED TO AND ACCEPTED BY:

For Contractor:	**For THE CLIENT:**
_____	_____
(Name)	(Name)
_____	_____
(Signature)	(Signature)
_____	_____
(date)	(date)

Federal I.D. No.: - -