



MODEL SHORT-FORM ASSOCIATION - INDEPENDENT CONTRACTOR AGREEMENT (FOR CORPORATION)

THIS INDEPENDENT CONTRACTOR AGREEMENT (together with any attachments referred to below, the "Agreement") is dated as of _____, 200_, by and between the ABC ASSOCIATION, a _____ not-for-profit corporation ("ABC"), and _____, a _____ corporation ("Contractor"). ABC and Contractor are also referred to as the "parties" and each as a "party."

Contractor shall be further identified as follows:

EIN: _____

Business Telephone: ____-____-_____

Primary Contact: _____

Email Address: _____@_____.

IN CONSIDERATION of the promises and mutual covenants contained herein, the parties, intending legally and equitably to be bound, agree as follows:

1. Work to Be Performed. Contractor agrees to perform the work specified in **Attachment A** (the "Work"). Contractor shall furnish the personnel, materials, services, equipment, facilities, and all other items necessary to accomplish the Work, and shall report in writing to ABC with whatever frequency and regarding whatever subject matter ABC may require to keep ABC informed about Contractor's activities under this Agreement.

2. Period for Performance. The period for performance of the Work shall commence on _____, 200_, and shall automatically be extended for successive ____ periods, unless (a) either party sends written notice of its desire not to extend within sixty (60) days before the end of any such period (including the initial period), or (b) this Agreement is earlier terminated pursuant to **Section 15**. Contractor shall promptly inform ABC in writing of any actual or potential delay in the timely performance of the Work, and the reasons for such delay.

3. Compensation.

3.1 Fixed Price Contract. This is a fixed-price contract for \$_____ (the "Fixed Contract Amount"). Contractor will submit invoices for payment in accordance with the following schedule:

_____ percent (___%) shall be paid on execution of this Agreement;

_____ percent (___%) shall be paid _____ (__) days after the Work has commenced; and

_____ percent (___%) shall be paid after acceptance of the Work by ABC.

3.2 Submission and Payment of Invoices. Contractor shall submit invoices for performance of the Work at the intervals specified in **Section 3.1**. Invoices shall be submitted on company letterhead to the ABC Staff Contact. To be considered properly prepared, invoices submitted to ABC must include: (a) invoice number; (b) invoice date and billing period; (c) total due on invoice; and (d) name, telephone and fax number of the contact person for questions related to the invoice. Contractor shall submit a final invoice no later than thirty (30) days following completion of the Work. Payment of the final invoice shall be made by ABC only after ABC's acceptance of all Work as provided in **Section 5**, and delivery to ABC of all deliverables as provided in **Section 6**. Subject to the terms and conditions of this Agreement, ABC shall pay each properly prepared invoice not later than thirty (30) days after receipt.

3.3 Reduction or Withholding of Payment. In addition to any other remedies available to ABC, if, in ABC's reasonable determination, Contractor fails to perform in accordance with the terms of this Agreement, ABC may refuse or limit approval of any invoices for payment, and may reduce or withhold payments to Contractor until such time as ABC reasonably determines that Contractor has met the performance terms established by this Agreement. ABC shall promptly notify Contractor of any such withholding of payment.

ABC Staff Contact. ABC's initial representative with respect to this Agreement (the "ABC Staff Contact") is _____ . The ABC Staff Contact may be changed by ABC from time to time; ABC will promptly notify Contractor of any such change.

4. Acceptance of Work. Acceptance of the Work will be made by the ABC Staff Contact. Acceptance or rejection of all or any part of the work shall be made in good faith in the exercise of the ABC Staff Contact's reasonable judgment and discretion.

5. Consultants and Subcontractors. Contractor shall not engage any consultant or subcontractor without the prior written approval from ABC. ABC shall not reimburse Contractor for any costs relating to consultants or subcontractors for which Contractor has not received ABC's prior written approval. When requesting the use of a consultant or subcontractor, Contractor shall furnish information explaining the need for such services, a copy of the proposed agreement for retaining the consultant or subcontractor, information concerning the consultant's or subcontractor's qualifications, skills, abilities, and proposed billing rate, and any additional information required by ABC to make a determination of acceptability. The approval or disapproval of any consultant or subcontractor shall be at the sole and absolute discretion of ABC.

6. Changes and Modifications. Any change to the Work or the terms of this Agreement must be set forth in a written amendment to the Agreement signed by the parties. Contractor promptly shall notify ABC in writing of any change in the Work that Contractor reasonably determines is necessary. Such notice shall specify (a) the elements of the Work for which Contractor is seeking a change, (b) the reason for the requested change, and (c) the impact, if any, that the requested change will have on (i) the Fixed Contract Amount, (ii) time for performance or (iii) any other terms or conditions of this Agreement. ABC shall respond in writing to a change request submitted in compliance with this **Section 6** no later than fifteen (15) days after receipt of such change request. Such response shall (a) approve the change and include an amendment to the Agreement reflecting the approved change, (b) reject the change request and state the rationale for such rejection, or (c) advise Contractor as to what additional information is needed by ABC to render an informed decision on the change request. If ABC approves the change, and if such change causes a change in the Fixed Contract Amount, the time required for performance of all or any part of the Work, or any other terms or conditions of this Agreement, the parties shall negotiate an equitable adjustment of the same and memorialize it in the written amendment to the Agreement.

7. Record Retention and Access. Contractor shall maintain books, records, documents, program and individual service records and other evidence of its accounting and billing procedures and practices which properly reflect all direct and indirect costs in connection with the Work. These records shall be subject at all reasonable times to inspection by authorized employees or agents of ABC. Contractor shall retain all such records concerning this Agreement for a period of three (3) years after the expiration or earlier termination of this Agreement. If any litigation, claim or audit is commenced before the expiration date of such three (3) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

8. Confidential Information. During the term of this Agreement, Contractor and its employees may receive or have access to data and information that is confidential and proprietary to ABC. All such data and information ("Confidential Information") made available to, disclosed to, or otherwise made known to Contractor in connection with this Agreement shall be considered the sole property of ABC. Confidential Information may be used by Contractor or its employees only for purposes of performing the obligations of Contractor hereunder. Contractor shall not disclose Confidential Information to any third party without the prior written consent of ABC. Contractor shall not use or duplicate any proprietary information belonging to or supplied by ABC, except as authorized by ABC. These obligations of confidentiality and non-disclosure shall remain in effect for a period of five (5) years following the expiration or earlier termination of this Agreement.

9. Copyrights, Trademarks and Inventions.

9.1 Definitions. For purposes of this **Section 9**, the terms "works," "trademark," and "invention" include anything created for ABC by Contractor, whether alone or with others, and whether they be independent contractors, employees, or agents of ABC.

9.2 Work Made for Hire. During the performance of this Agreement, Contractor may create certain works for ABC that may be copyrighted under United States law. To the extent that any such works are created, Contractor will be considered to have created a work made for hire as defined in 17 USC §§ 101 et seq. and ABC shall have the sole right to the copyright. In the event that any work created by Contractor does not qualify as a work for hire, Contractor agrees to assign its right, title and interest in and to the work to ABC.

9.3 Title to Works, Trademarks, and Inventions Produced. It is understood and agreed that the entire right, title, and interest throughout the world in and to all works, trademarks, and/or inventions that are conceived of or produced, whether or not reduced to practice, by Contractor, either solely or jointly with others, during the course of, in connection with, or as related to the performance of this Agreement, shall be and hereby are vested and assigned by Contractor to ABC. Contractor has acquired or shall acquire from each of its employees, consultants, and subcontractors, if any, the necessary rights to all such works, trademarks, and inventions produced by such employees, consultants, and subcontractors, within the scope of their employment by Contractor in performing services under this Agreement. Contractor shall obtain the cooperation of such employee to secure to ABC or its nominees the rights may acquire in accordance with the provisions of this clause. With respect to copyrighted materials, Contractor further agrees that ABC is assigned all rights, including the right to edit and create derivative works from the materials, and the right to any and all commercial reproduction, transmission, display, performance or distribution of the materials or any derivative works based on the materials via any means currently existing or developed or discovered in the future, including, without limitation, posting to the Internet, CD, DVD or other digital format.

9.4 Further Assurances. Contractor agrees to execute any and all documents prepared by ABC and to do all other lawful acts as may be required by ABC to establish and protect such rights.

10. Indemnification. Contractor hereby agrees to indemnify, defend and hold harmless ABC, and its directors, officers and employees (collectively, the "Indemnified Parties") from and against any and all liabilities, losses, costs, damages, claims, liens, judgments, penalties, fines, attorneys' fees, court costs and other legal expenses, insurance policy deductibles and all other expenses (collectively, "Losses") arising out of or relating to an Indemnified Matter (as defined below). For purposes of this Section 10, an "Indemnified Matter" shall mean any matter for which one or more of the Indemnified Parties incurs liability or Losses if the Losses arise out of or involve, directly or indirectly, (a) any intentional or grossly negligent act or omission of Contractor or its directors, employees, agents or subcontractors or (b) Contractor's failure to perform any of its obligations under this Agreement. Contractor's obligations hereunder shall include, but shall not be limited to (a) compensating the Indemnified Parties for Losses arising out of Indemnified Matters within ten (10) days after written demand from an Indemnified Party and (b) providing a defense, with counsel reasonably satisfactory to the Indemnified Party, at Contractor's sole expense, within ten (10) days after written demand from the Indemnified Party, of any claims, action or proceeding arising out of or relating to an Indemnified Matter whether or not litigated or reduced to judgment and whether or not well founded. The Indemnified Parties need not first pay any Losses to be indemnified hereunder. Contractor's obligations under this **Section 10** shall not be released, reduced or otherwise limited because one or more of the Indemnified Parties are or may be actively or passively negligent with respect to an Indemnified Matter or because an Indemnified Party is or was partially responsible for the Losses incurred. This indemnity is intended to apply to the fullest extent permitted by applicable law. Contractor's obligations under this **Section 10** shall survive the expiration or termination of this Agreement unless specifically waived in writing by ABC after such expiration or termination. ABC shall promptly notify Contractor of any claim against an Indemnified Party which is covered by these indemnification provisions and shall authorize representatives to settle or defend any such claim or suit and to represent ABC in such litigation.

11. Independent Contractor Status. The relationship of Contractor to ABC is that of an independent contractor, and nothing in this Agreement shall be construed as creating any other relationship. Contractor shall comply with all laws and assume all risks incident to its status as an independent contractor. Contractor covenants and agrees to pay all applicable federal, state and local income taxes, associated payroll and business taxes, licenses and fees, and such insurance as is necessary for Contractor's protection in connection with Work performed under this Agreement; it being understood and agreed that no such taxes or fees shall be withheld or paid by ABC on behalf of Contractor. **Contractor acknowledges and agrees that it is responsible for paying, according to applicable law, Contractor's income taxes, if any. No workers' compensation insurance shall be obtained by ABC covering Contractor or employees of Contractor.**

12. Disputes. If the parties are unable to settle a disputes relating to this Agreement, either party, on written notice to the other party, shall submit the dispute to arbitration in accordance with the rules of the American

Arbitration Association in the State of _____. Judgment on the arbitration award may be entered in any court having jurisdiction.

13. Termination. Either party may terminate this Agreement at any time for any reason on thirty (30) days advance written notice to the other party. ABC may terminate this Agreement immediately if any of the following circumstances occurs: (a) Contractor fails to timely deliver the goods or perform the services required by this Agreement; (b) Contractor fails to perform any of the other material provisions of this Agreement or so fails to make progress with the Work as to endanger performance of this Agreement in accordance with its terms; and in either of the circumstances listed in (a) or (b), Contractor does not cure such failure within a period of thirty (30) calendar days after receipt of written notice from ABC specifying such failure; (c) in the event of suspension of Contractor's business, insolvency, institution of bankruptcy or liquidation proceedings by or against Contractor, appointment of a trustee or receiver for Contractor's property or business, or any assignment, reorganization, or arrangement by Contractor for the benefit of creditors; or (d) a material conflict of interest arises pursuant to **Section 14.9**.

13.1 Transfer of and Payment for Completed Deliverables and Materials. In the event of a termination of this Agreement as provided in this **Section 13**, ABC may require Contractor to transfer and deliver to ABC, in the manner directed by ABC, (a) any completed deliverables, works and research materials (collectively, "Completed Deliverables"), and (b) such partially completed deliverables, works, research materials, and information (collectively, the "Materials") as Contractor has produced or acquired for the performance of this Agreement. Contractor further agrees to protect and preserve property in the possession of Contractor in which ABC has an interest. Payment for Completed Deliverables delivered to and accepted by ABC shall be at the price specified in this Agreement. Payment for Materials delivered to and accepted by ABC that are necessary or convenient to the protection and preservation of property shall be at a price designed to reimburse Contractor for the reasonable value of the Work performed without profit. ABC may withhold monies otherwise due to Contractor for Completed Deliverables and/or Materials in such amounts as ABC determines necessary to protect ABC against loss due to outstanding liens or claims against the same. The provisions of this **Section 13.1** shall survive the termination of this Agreement.

14. Miscellaneous.

14.1 Entire Agreement. This Agreement and all attachments hereto constitute the entire agreement between the parties and supersede all prior agreements relating to the subject matter hereof.

14.2 Severability. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions.

14.3 Amendments; Waivers. This Agreement may only be modified in writing, signed by the parties in interest at the time of such modification. No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by ABC or Contractor of the same or any other provision. Either party's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of such party's consent to or approval of any subsequent act.

14.4 Notices. All notices and demands of any kind or nature which either party may be required or desire to serve on the other in connection with this Agreement shall be in writing and may be served personally, by telecopier, by certified mail, or by commercial overnight delivery (e.g., Federal Express), with constructive receipt deemed to have occurred one (1) calendar day after the mailing, sending or transmitting of such notice, to the following addresses or telecopier numbers:

If to ABC:
ABC

Attn: _____
Fax: ____-____-_____

If to Contractor:

Fax: ____-____-_____

14.5 Binding Effect. This Agreement shall bind the parties, their respective heirs, personal representatives, successors and assigns.

14.6 Multiple Parties. If more than one person or entity is named as Contractor herein, the obligations of Contractor shall be the joint and several responsibilities of all persons or entities named herein as Contractor. Service of a notice in accordance with **Section 14.4** on one Contractor shall be deemed service of notice on all Contractors.

14.7 Choice of Law. This Agreement shall be governed by and interpreted solely in accordance with the laws of the State of _____ except for its conflict-of-laws or choice-of-law principles.

14.8 Conflict of Interest. Contractor represents and warrants that it has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, Contractor shall immediately inform ABC in writing of such conflict. If, in the reasonable judgment of ABC, such conflict poses a material conflict to and with the performance of Contractor's obligations under this Agreement, then ABC may terminate the Agreement immediately upon written notice to Contractor; such termination of the Agreement shall be effective upon the receipt of such notice by Contractor.

IN WITNESS WHEREOF, ABC and Contractor have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ABC ASSOCIATION By: _____ Name: _____ Title: _____ Approved for Execution: _____	[CONTRACTOR] By: _____ Name: _____ Title: _____ _____
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ATTACHMENT A

DESCRIPTION OF THE WORK

See attached.

ATTACHMENT B

PROJECT BUDGET

See attached.

Disclaimer ¶

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This document has been produced by the law firm of Venable LLP, 575 7th Street, N.W., Washington, D.C. 20004. For more information, please contact Jeff Tenenbaum at jstenenbaum@venable.com or via telephone at 202-344-8138.