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# INDEPENDENT CONTRACTOR AGREEMENT

 This Independent Contractor Agreement (the “Agreement”) is made this \_\_\_ day of *[Month]* 20\_\_ (the “Effective Date”), between *[Name of Travel Agency]*, having its principal place of business at *[Address of Travel Agency] (*“Company”) and *[Name of Contractor]*, residing and/or located at *[Address of Contractor] (*“Contractor”), each a “Party” and together referred to herein as the “Parties.”

WHEREAS, Company is engaged in the business of a travel agency including the selling airline and other common carrier tickets, tours, cruises and related items, enjoys the goodwill of the public, and has a reputation for fair dealing; and

WHEREAS, it is deemed to be to the mutual advantage of Company and Contractor to enter into this Agreement upon the terms and conditions hereinafter set forth.

 NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the sufficiency of which is hereby acknowledged, the undersigned Parties agree as follows:

1. Term of Agreement. *[Choose ONE of the following paragraphs:]*

*[Indefinite term]* This Agreement shall be effective as of the Effective Date set forth above and shall remain in effect until terminated in accordance with Section 19 below.

*[Fixed duration term]* This Agreement shall become effective as of the Effective Date set forth above and shall remain in effect for a period of *[Enter number]* year(s), unless terminated sooner in accordance with Section 19 below.

2. Duties of Contractor. Contractor agrees to perform this Agreement as a self-employed business person or business entity to sell travel services to members of the general public and/or business entities. Contractor shall perform its obligations hereunder in accordance with travel industry ethical standards and business customs. Company shall not require Contractor to perform these duties at Company’s place of business, nor shall Company require Contractor to work a stated number of hours or keep a specific schedule.

3. Duties of Company. Company shall compensate Contractor for the services rendered pursuant to this Agreement in accordance with the Schedule of Compensation, annexed hereto as Exhibit A and made a part hereof. *[Exhibit A contains a common commission arrangement and payment conditions. This Section 3 can also be used to specify any other obligations the agency has to the contractor, for example, processing tickets. The nature of these obligations will vary depending on agency practices.]*

4. Sales Quotas; Minimums; Draws. The Parties agree that Contractor is not: (a) required to achieve any particular sales quota or revenue goal; (b) guaranteed to receive from Company any minimum amount of compensation for rendering services hereunder; or (c) entitled to take a draw or receive an advance against Contractor’s anticipated earnings.

5. Sole Compensation. The amounts paid to Contractor pursuant to the Schedule of Compensation shall be the sole compensation payable by Company for the services rendered under this Agreement. Contractor is not entitled to receive, and shall not assert any claim for, any additional monetary or non-monetary compensation not specifically provided for herein.

6. Benefits. Contractor is not an employee of Company and accordingly is not eligible to receive any of the benefits Company may currently provide or later provide to its employees, including but not limited to sick leave, paid time off, medical insurance benefits, or the right to participate in a Company retirement plan such as a 401(k) or ESOP.

7. Use of IATA, ARC and CLIA Numbers. If Contractor is permitted to use Company’s authorized International Air Transport Association (“IATA”) number, Airlines Reporting Corporation (“ARC”) number or Cruise Lines International Association (“CLIA”) number to book travel, then Company shall be entitled to receive its share of the commission or other compensation paid by the vendor for all such sales brought to Company for processing. Contractor’s use of these numbers is strictly limited to the purposes of this Agreement, and any other use during the term of this Agreement or thereafter is prohibited.

8. Offset to Compensation. *[Choose ONE of the following two paragraphs:]*

*[More favorable to agency]* Company shall have the right to deduct from Contractor’s compensation the amount of any debit memo, commission recall, customer refund, credit card chargeback, or similar post-sale adjustment made in connection with a commissionable sale completed by Contractor under this Agreement.

*[More favorable to contractor]* In the event that, as a result of Contractor’s actions or omissions, a debit memo, commission recall, customer refund, credit card chargeback, or similar post-sale adjustment is made in connection with a commissionable sale completed by Contractor under this Agreement, Company shall have the right to deduct the amount of such adjustment from Contractor’s compensation.

*[Add these sentences to the end of whichever paragraph above is chosen.]* In the event that the deduction cannot be made because the adjustment exceeds the amount of Contractor’s compensation, Contractor shall pay the amount of the deficit within *[Enter number]* days of receipt of written demand for same from Company. Alternatively, at Company’s option, the shortfall may be carried over and deducted from future compensation expected to be earned by Contractor. Company’s right to recover any the amount of any adjustment from Contractor shall survive the termination of this Agreement.

9. Rental of Office Space and Equipment. If needed and as a convenience to Contractor, Company may lease or sublease to Contractor office space and the use of its office equipment. Monthly rental rates are set forth on Exhibit B, annexed hereto and made a part of this Agreement. Any sublease entered into hereunder shall be subject to all provisions of Company’s lease of the premises.

10. Expenses. As an independent business Contractor is solely responsible for all expenses incurred by Contractor in connection with the performance of this Agreement. Company shall have no liability to Contractor or any third party for any such expenses including, but not limited to, office supplies, business cards, letterhead, postage, telephone and Internet access, bank charges, automobile mileage and parking costs.

11. Compliance with the Law. Contractor is solely responsible for compliance with all applicable federal, state and local laws including, but not limited to, statutes, regulations, and/or ordinances governing or affecting licensing, registration (including any state seller of travel laws), permitting, advertising or other requirements for which businesses must comply.

12. Authority to Bind; Contracts. Unless specifically authorized in writing by an officer of Company, Contractor shall have no authority to bind, obligate or otherwise commit Company by any promise or representation to perform services other than with respect to the transactions contemplated under this Agreement. Any such written contract negotiated by Contractor on behalf of Company must be signed by a Company officer.

13. Right to Contract with Third Parties. Company retains the right to contract for similar services with other business entities or individuals. Similarly, Contractor retains the right to enter into contracts with other to render similar services.

14. Indemnification. *[Choose ONE of the following two paragraphs:]*

*[Unilateral; more favorable to agency]* Contractor agrees to indemnify and hold Company, its officers, employees and agents harmless from any claim of liability (irrespective of whether such claim is based on tort, contract, statute or otherwise) made by any party arising out of any transaction initiated by Contractor, made on behalf of a client of Contractor, or any other act or omission of Contractor, unless attributable to Company’s negligence or willful misconduct. The foregoing indemnification obligation shall survive termination this Agreement.

*[Mutual; more favorable to contractor]* Each Party agrees to indemnify and hold the other Party, its officers, employees and agents harmless from any claim of liability (irrespective of whether such claim is based on tort, contract, statute or otherwise) made by any party arising out of any transaction initiated by the indemnifying Party, made on behalf of a client of the indemnifying Party, or any other act or omission of the indemnifying Party, unless attributable to the other Party’s negligence or willful misconduct. The foregoing indemnification obligation shall survive termination this Agreement.

15. Insurance. *[Choose ONE of the following two paragraphs:]*

*[Unilateral; more favorable to agency]* During the term of this Agreement, Contractor represents and warrants that it will maintain comprehensive general liability and errors and omissions insurance in amounts satisfactory to Company. Contractor agrees to deliver certificates of insurance or other evidence of coverage to Company upon request.

*[Mutual; more favorable to contractor]* During the term of this Agreement, each Party represents and warrants that it will maintain comprehensive general liability and errors and omissions insurance in amounts reasonably adequate given the scale and scope of its business. Each Party agrees to deliver certificates of insurance or other evidence of coverage to the other Party upon request.

16. Relationship of the Parties. Contractor is engaged by Company as an independent contractor, and nothing herein shall be construed to create an employer-employee relationship, partnership, or joint venture between the Parties. As an independent business entity, Contractor assumes the full risk of loss in the event that Contractor’s compensation from sales does not cover expenses incurred.

17. Withholding. As a consequence of the Parties’ relationship as described above, all sums required to be paid by Company to Contractor shall be paid in full, without reduction from the gross amount any federal or state income taxes, Social Security (FICA) tax, other employer or payroll taxes, or any other amount customarily withheld from an employee’s wages or salary. Contractor is solely responsible for payment of all such amounts as may be applicable. On or before January 31, Company will prepare and submit Form 1099, and any comparable state income reporting forms, setting forth the gross amount of compensation paid to Contractor during the calendar year most recently concluded.

18. Confidential Information. The Parties acknowledge that Company may disclose to Contractor certain information of a confidential or proprietary nature (the “Confidential Information”) as needed in order for Contractor to perform the duties contemplated under this Agreement. Confidential Information includes but is not limited to Company’s business or marketing plans or strategies, operating procedures, trade secrets, customer and supplier information, client lists, sales leads, sales projections, pricing or profit information, credit card information, its IATA, ARC or CLIA numbers, and any other information designated as such by Company at the time of disclosure. Contractor further acknowledges that unauthorized disclosure to a third party or other misuse of the Confidential Information would cause severe and irreparable harm to Company. Accordingly, except to the extent necessary to the performance of this Agreement, Contractor will not use or disclose, either during or after the term of this Agreement, any Confidential Information without Company’s prior written consent. Because any breach or threatened breach of the obligations set forth in this Section 18 will result in irreparable harm to Client for which damages would be an inadequate remedy, Company shall be entitled to obtain equitable relief, including an injunction, in addition to any other rights and/or remedies otherwise available at law. *[This paragraph lists in general terms various kinds of information commonly disclosed by agencies to contracted agents selling travel. If there is something else not named or described here that the agency anticipates providing that should be treated as confidential, the list should be revised accordingly.]*

19. Termination. This Agreement may be terminated in either of the following ways: (a) without cause, by either Party upon thirty (30) days’ prior written notice to the other Party; or (b) if either Party is in material breach of an obligation under this Agreement, the other Party shall provide the breaching Party with written notice specifying the nature of the breach. The Party alleged to be in breach shall then have five (5) calendar days from the date of receipt of the notice to cure the breach. If the breach remains uncured after the stated period, the non-breaching Party may terminate the Agreement, with such termination effective immediately upon delivery of written notice to that effect to the other Party. *[Different time frames can be specified for the prior notice and/or cure periods as desired; these are merely suggestions.]*

20. Effect of Termination. Upon termination of the Agreement for any reason, Contractor shall be entitled to receive all compensation earned but net yet paid as of the effective date of the termination. In such case, Contractor shall promptly deliver to Company all Confidential Information and any other Company property which may remain in Contractor’s possession. Contractor shall also immediately cease any and all use of Company’s intellectual property pursuant to any license granted under this Agreement. Under no circumstances shall Contractor be entitled to receive any compensation for services rendered following the effective date of termination.

21. Non-Solicitation. During the term of this Agreement and for one (1) year following its termination, Contractor will not, directly or indirectly, induce, attempt to induce, or aid others in inducing any person employed or engaged by Company to terminate their employment or contractual relationship with Company in order to render services to Contractor or any third party. The Parties mutually acknowledge that such interference with employment or contractual relationships will cause direct severe and irreparable financial loss and hardship to Company.

*[Delete all of the following Section 22 and renumber remaining the sections if permission to use the agency’s name or logo is not being given to the contractor.]*

 22. License to Use Company Marks. During the term of this Agreement, Company grants to Contractor a limited, non-exclusive, royalty-free license to use Company’s trade name and any Company logo (together, the “Company Marks”) on Contractor’s business cards, website, and letterhead. If Contractor elects to make such use of the Company Marks, Contractor must prominently and conspicuously display the words “independent sales agent” or substantially equivalent language to avoid creating the false impression that Contractor is a Company employee. All use of the Company Marks is subject to Company’s sole but reasonable prior approval, and any unauthorized use by Contractor is prohibited. *[Add here ONE of the following:]*

*[Use these sentences if the agency’s name and/or logo is federally registered]* One or more of the Company Marks is registered with the U.S. Patent and Trademark Office (Reg. No. *[add registration number(s) here]*). Contractor acknowledges that Company is the sole owner of the Company Marks and warrants that Contractor will not assert any challenge to such ownership or to Company’s federal trademark registration(s). This warranty shall survive termination of this Agreement.

*[Use these sentences if the agency’s name and/or logo is NOT federally registered]* Contractor acknowledges that Company is the sole owner of the Company Marks and warrants that Contractor will not assert any challenge to such ownership. This warranty shall survive termination of this Agreement.

23. Notices. Notices required or permitted under this Agreement shall be deemed given upon delivery to the receiving Party at the addresses set forth below in the first paragraph of this Agreement, or such other address a Party may specify thereafter in writing to the other Party.

24. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of *[Name of State]*, the courts of which shall have exclusive jurisdiction and venue over all controversies arising out of, or relating to, this Agreement.

25. Amendment. This Agreement may not be amended except in a writing signed by both Parties, and no amendment, modification, termination or waiver shall be binding unless it is in writing and signed by the Party against whom such change is sought to be enforced.

26. Assignment. This Agreement may not be assigned by either Party without the written approval and consent of non-assigning Party.

27. Waiver. No waiver by either Party of any condition, term or provision of this Agreement shall be deemed to be a waiver of a preceding or succeeding breach of the same or any other condition, term or provision.

28. Entire Agreement. This Agreement constitutes the entire agreement between the Parties, and there are no other agreements or understandings, whether oral or written, concerning the subject matter herein than that set forth herein.

*[Use ONE of the following signature blocks:]*

|  |  |
| --- | --- |
| COMPANY: | CONTRACTOR: |
|  |  |
| *[Company Name]* | *[Contractor Entity Name]* |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| By: *[Name of Signatory]* | By: *[Name of Signatory]* |
| *[Title of Signatory]* | *[Title of Signatory]* |

*[Note: Use the block above when the Contractor is a business entity such as a corporation or an LLC. For the legal protection of both parties, and to best uphold the parties’ non-employee relationship, the signature block should reflect that the person signing the Agreement is not doing so in his or her individual capacity, but rather as an officer, member, manager, etc. that is authorized to bind the company. Use the block below when the Contractor has not formed a separate legal business entity and is being engaged as an individual. Also, ensure that each page is initialed where indicated in the footer.]*

|  |  |
| --- | --- |
| COMPANY: | CONTRACTOR: |
|  |  |
| *[Company Name]* | *[Contractor Name]* |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| By: *[Name of Signatory]* |  |
| *[Title of Signatory]* |  |

# EXHIBIT A

# SCHEDULE OF COMPENSATION

##  1. Commission Split for Completed Sales. (a) For sales leads provided to Contractor by Company, Contractor’s share of the collected commission received in connection with a completed sale shall be [X]% of the Net Commission received from the vendor or supplier, with Company retaining the remaining [100-X]%. (b) For self-generated leads, Contractor’s share of the collected commission received in connection with a completed sale shall be [X]% of the Net Commission received from the vendor or supplier, with Company retaining the remaining [100-X]%. The term “Net Commission” shall mean the gross amount of commission or other sales-based revenue received by Company from the vendor or supplier, less the amount of any administrative fees chargeable to the transaction. [Notes: It is not necessary to have two different commission splits based on the source of the lead resulting in the sale; this is merely one way it can be done. To avoid disputes regarding deductions taken from the gross commission, it is suggested that the various kinds of administrative fees which may be assessed in connection with a transaction, and the cost of each, be stated in this Exhibit A.]

 2. Contractor Service Fee. Contractor may, at its option, assess a service fee to its clients and Contactor shall be entitled to receive *[X]*% of such amount. Contractor is free to determine its own service fee schedule and may collect these amounts through Company’s merchant account.

 3. When Payable. Commission and/or service fee compensation shall be due and payable to Contractor only after: (i) an invoice for the travel sale has been generated through Company; (ii) payment for the invoiced travel sale has been collected by Company; and (iii) the gross commission due from the sale has been received by Company from the issuing vendor or supplier. Company shall issue payment to Contractor for Contractor’s share of the net commission within ten (10) days thereafter.

##  4. Unpaid Commissions. Company may but shall have no obligation to take action on behalf of Contractor to recover a payment due from a vendor or supplier in connection with a commissionable sale made pursuant to this Agreement. Company shall have no liability to Contractor for any portion of a commission earned but not paid to Company by the vendor or supplier.

EXHIBIT B

OFFICE SPACE AND EQUIPMENT RENTAL

*[Note: This Exhibit B is not intended as a substitute for a formal lease or sublease agreement; rather, it is appended to the contract to indicate that charges are being assessed for items that ordinarily would be provided at no cost if the worker was an employee. As such, its presence supports a finding that the worker is truly an independent contractor. This page may be deleted in its entirety if inapplicable.]*

Office Space

*[Insert here location and/or brief description of specific space to be rented]*

 Monthly Rent: $*[Amount]*

Equipment

|  |  |
| --- | --- |
| Item | Monthly Rental Rate |
| Desk and Chair | $*[Amount]* |
| Computer(includes Monitor, Keyboard, Mouse) | $*[Amount]* |
| Desktop Printer | $*[Amount]* |
| Copier / Scanner | $*[Amount]* |
| Internet Service | $*[Amount]* |
| Telephone  | $*[Amount]* |
|  |  |

*[Revise as appropriate; some of these items could be already included in the office space rental.]*