

# KAI CONCEPTS, LLC TERMS AND CONDITIONS FOR INDEPENDENT CONTRACTORS

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## KAI CONCEPTS TERMS & CONDITIONS GOVERNING SERVICES, WORK PRODUCT, AND COMPENSATION FOR INDEPENDENT CONTRACTORS

This document sets forth terms and conditions (“Terms and Conditions”) governing all past, present, and future work, work product, and compensation relating to all Services rendered by independent contractor(s) (“Independent Contractor”) on behalf of Kai Concepts, LLC (“Company”).

The Terms and Conditions are effective as of January 23, 2012, and shall apply to all past, present, and future Services rendered by Independent Contractor(s) on behalf of Company. Company shall have the right at any time to change or modify these Terms and Conditions. Such changes or modifications shall be effective immediately upon publication on the kai-concepts.com website.

All compensation paid to Independent Contractor(s) (“Payments”) shall be subject to these Terms and Conditions, and an Independent Contractor’s acceptance of such Payments shall constitute that Independent Contractor’s ongoing acknowledgment and acceptance of these Terms and Conditions.

### 1. RECITALS

The Company is in the business of developing high performance aquatic equipment, including, but not limited to, the “Kiteboat,” and the “Jetfoiler;” and desires to engage and contract for the Services of the Independent Contractor to perform certain tasks relating to Company’s business. Independent Contractor desires to perform or render specific Services (“Services”) on behalf of Company as an independent contractor in exchange for receiving Payments from Company.

### 2. STATUS OF INDEPENDENT CONTRACTOR

The Terms and Conditions do not constitute a hiring by either party. It is the parties intentions that Independent Contractor shall have an independent contractor status and not be an employee for any purposes. Independent Contractor shall retain sole and absolute discretion in the manner and means of carrying out their activities and responsibilities under these Terms and Conditions. The Terms and Conditions shall not be considered or construed to be a partnership or joint venture, and the Company shall not be liable for any obligations incurred by Independent Contractor unless specifically authorized in writing. Independent Contractor shall not act as an agent of the Company, ostensibly or otherwise, nor bind the Company in any manner, unless specifically authorized to do so in writing.

### 3. TASKS, DUTIES AND SERVICES

- a) **Relationship of the Parties.** Independent Contractor performs Services for Company under these Terms and Conditions as an independent contractor. All Services shall be performed only by Independent Contractor and Independent Contractor’s employees. Under no circumstances shall Independent Contractor, or any of Independent Contractor’s employees, look to Company as his/her employer, or as a partner, agent or principal. Neither Independent Contractor, nor any of Independent Contractor’s employees, shall be entitled to any benefits accorded to Company’s employees, including without limitation worker’s compensation, disability insurance, vacation or sick pay. Independent Contractor shall be responsible for providing, at Independent Contractor’s expense, and in Independent Contractor’s name, unemployment, disability, worker’s compensation and other insurance, as well as licenses and permits usual or necessary for conducting the Services. Independent Contractor shall be responsible for payment of any federal, state, or local taxes which may be due with respect to any sums paid by Company. Independent Contractor shall be wholly responsible for obtaining and maintaining any insurance necessary to protect Independent Contractor’s assets and/or employees. Company will not provide fringe benefits, including health insurance, paid vacation, paid time off, or any other employee benefit, for the benefit of Independent Contractor. Independent Contractor will determine the method, details and means of performing the Services. Independent Contractor is responsible for providing the materials necessary to complete the job satisfactorily, and will determine by which means the job is to be completed. Independent Contractor shall have no right to bind Company under any commitment or agreement without the express prior written consent of Company.
- b) **Services.** Independent Contractor will perform the Services for Company as an independent contractor. The Services have been specially ordered and commissioned by Company. Independent Contractor will perform such Services in a diligent and workmanlike manner and in accordance with the schedule, if any. The content, style, form and format of any work product of the Services shall be completely satisfactory to Company and shall be consistent with Company’s standards.

- c) **Independent Contractor Responsibilities.** Independent Contractor shall meet the obligations and responsibilities relating to the Services to be performed by Independent Contractor under these Terms and Conditions.
- d) **Devotion of Time.** Independent Contractor shall devote such time to the performance of its duties as is reasonably necessary for satisfactory performance under these Terms and Conditions. In performing the Services, Independent Contractor agrees to diligently prosecute such work to completion in a timely fashion in accordance with the Company's requirements.
- e) Independent Contractor shall additionally perform any and all tasks and duties associated with the Services set forth above, including but not limited to, work being performed already or related change orders. Independent Contractor shall not be entitled to engage in any activities which are not expressly authorized by Company.
- f) **Other Activities of Independent Contractor.** Except as otherwise provided in these Terms and Conditions, Independent Contractor may engage in activities other than those contracted for by Company, provided that such activities do not directly conflict with Independent Contractor's duties hereunder. Independent Contractor expressly agrees not to engage in work for any competitor of Company or competitor of Company's clientele for which Independent Contractor performs work under these Terms and Conditions.
- g) The books and records related to the Services set forth in these Terms and Conditions shall be maintained by the Independent Contractor at the Independent Contractor's principal place of business and open to inspection by Company during regular working hours. Documents to which Company will be entitled to inspect include, but are not limited to, any and all contract documents; change orders/purchase orders; and work authorized by Independent Contractor or Company on existing or potential projects related to these Terms and Conditions.
- h) Independent Contractor shall be responsible to the management and directors of Company, but Independent Contractor will not be required to follow or establish a regular or daily work schedule.
- i) Independent Contractor will not rely on the equipment or offices of Company for completion of tasks and duties set forth pursuant to these Terms and Conditions. Any advice given Independent Contractors regarding the Services shall be considered a suggestion only, not an instruction. Company retains the right to inspect, stop, or alter the work of Independent Contractor to assure its conformity with these Terms and Conditions.

#### **4. COMPENSATION AND REIMBURSEMENT**

Independent Contractor shall be compensated and reimbursed for the Services rendered by Independent Contractor on behalf of Company. Completeness of work product shall be determined by Company in its sole discretion, and Independent Contractor agrees to make all revisions, additions, deletions or alterations as requested by Company. Other than legal-related fees and expenses, no other fees and/or expenses will be paid to Independent Contractor, unless such fees and/or expenses have been approved by the appropriate Company executive. Independent Contractor is to provide a detailed invoice to Company on a monthly basis for payment.

#### **5. NOTICE REGARDING WITHHOLDING OF TAXES**

Independent Contractor recognizes and understands that it will be required to file corporate and/or individual tax returns and to pay taxes in accordance with all provisions of applicable Federal and State law. Independent Contractor hereby promises and agrees to indemnify the Company for any damages or expenses, including attorney's fees, and legal expenses, incurred by the Company as a result of Independent Contractor's failure to make such required payments.

#### **6. AGREEMENT TO WAIVE RIGHTS TO BENEFITS**

- a) Independent Contractor hereby waives and foregoes the right to receive any benefits given by Company to its regular employees, including, but not limited to, health benefits, vacation and sick leave benefits, profit sharing plans, etc. This waiver is applicable to all non-salary benefits which might otherwise be found to accrue to the Independent Contractor by virtue of their Services to Company, and is effective for the entire duration of Independent Contractor's engagement with Company. This waiver is effective independently of Independent Contractor's employment status as adjudged for taxation purposes or for any other purpose.
- b) Neither these Terms and Conditions, nor any duties or obligations under these Terms and Conditions may be assigned by either party without the consent of the other.

#### **7. CONTINUING OBLIGATIONS**

The provisions of the following Sections of these Terms and Conditions shall survive expiration or termination of the contractual working relationship between Independent Contractor and Company:

- (i) CONFIDENTIALITY (Section 8);
- (ii) PROPRIETARY RIGHTS, INVENTIONS AND NEW IDEAS (Section 9);
- (iii) NON-SOLICITATION (Section 11);
- (iv) WARRANTIES AND INDEMNIFICATION (Section 21)

## 8. CONFIDENTIALITY

**8.1 Definitions** “Proprietary Information” is all information and any idea whatever form, tangible or intangible, pertaining in any manner to the business of the Company, or any of its Affiliates, or its employees, clients, consultants, or business associates, which was produced by any employee or consultant of the Company in the course of his or her employment or consulting relationship or otherwise produced or acquired by or on behalf of the Company. All Proprietary Information not generally known outside of the Company’s organization, and all Proprietary Information so known only through improper means, shall be deemed “Confidential Information.” Confidential Information need not be novel, unique, patentable, copyrightable, or constitute a trade secret in order to be designated Confidential Information. Confidential Information is to be broadly defined, and includes all information that has or could have commercial value or other utility in the business in which the Company is engaged or contemplates engaging, and all information of which the unauthorized disclosure could be detrimental to the interests of the Company, whether or not such information is identified as Confidential Information by the Company. By example and without limiting the foregoing definition, Confidential Information shall include, but not be limited to:

- a) Any scientific or technical information that may consist of ideas, inventions, designs, processes, procedures, trade secrets, improvements, technologies, mask works, innovations, patents, patent applications, discoveries, improvements, data, know-how, formats, test results;
- b) Company’s actual and proposed: business(es); Services; products; trade secrets; techniques; processes; operations; formulae; product specifications; know-how; processes; compositions; formulas; research and development techniques; processes; Trade Secrets; computer programs; software; electronic codes; discoveries; designs; sketches; drawings; samples; formats; marketing and manufacturing plans and materials; analyses; strategies; forecasts; research and development; concepts; ideas;
- c) Business, marketing, and strategic plans; forecasts, unpublished financial information, budgets, projections, and customer identities, characteristics and agreements; and employee personnel files and compensation information;
- d) Names, addresses and any other characteristics, identifying information or aspects of Company’s existing or potential customers, employees, vendors or suppliers; or any information derived, summarized or extracted from any of the foregoing;
- e) Any collaborator names or contact information not generally known or easily ascertainable by the general public;
- f) Any financial information relating to the funding or accounting of past, present, or future business activities of such party, its affiliates, subsidiaries or affiliated companies;
- g) Any other information that should reasonably be recognized as Confidential Information of the Company.

**8.2 Company’s Trade Secrets** Employee understands that in performance of Employee’s job duties with the Company, Employee will be exposed to the Company’s Trade Secrets. “Trade Secrets” means information or material that is commercially valuable to the Company and not generally known in the industry. This includes:

- a) Any and all versions of the Company’s proprietary system (including source code and object code), hardware, firmware and documentation;
- b) Technical information concerning the Company’s products and Services, including product data and specifications, diagrams, flow charts, drawings, test results, know-how, processes, inventions, research projects and product development;
- c) Information concerning the Company’s business, including cost information, profits, sales information, accounting and unpublished financial information, business plans, markets and marketing methods, customer lists and customer information, purchasing techniques, supplier lists and supplier information and advertising strategies;
- d) Information concerning the Company’s employees, including their salaries, strengths, weaknesses and skills;
- e) Information submitted by the Company’s customers, suppliers, employees, consultants or co-venturers with the Company for study, evaluation or use; and
- f) Any other information not generally known to the public which, if misused or disclosed, could reasonably be expected to adversely affect the Company’s business.

**8.3 Existence of Confidential Information** The Company owns and has developed and compiled, and will develop and compile, certain Trade Secrets, proprietary techniques and other Confidential Information which have great value to its business. This Confidential Information includes not only information disclosed by the Company to the Independent Contractor, but also information developed or learned by the Independent Contractor during the course of the relationship with the Company.

#### **8.4 Protection of Confidential Information**

- a) From time to time, the Company may disclose Confidential Information to the Independent Contractor. The Independent Contractor acknowledges that the Confidential Information is proprietary to the Company, has been developed and obtained through great efforts by the Company, and that unauthorized use or disclosure of any Confidential Information could cause substantial detriment to the Company and/or the Company's contacts. Independent Contractor hereby agrees to hold in strict confidence and trust all Confidential Information and agrees not to disclose or otherwise provide or transfer, directly or indirectly, any Confidential Information or anything related to the Confidential Information to third parties, including, but not limited to, Independent Contractor's affiliates, subsidiaries and business partners, without the prior written consent of Company. Independent Contractor further agrees not to use the Confidential Information, or to manufacture or test any product embodying Confidential Information, other than for the purpose set forth above.
- b) The Independent Contractor shall not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any third party, other than in the assigned duties and for the benefit of the Company, any of the Company's Confidential Information, either during or after the relationship with the Company.
- c) In the event the Independent Contractor desires to use, make available, sell, disclose, or otherwise communicate to any third party any specific portion(s) or aspect(s) of the Company's Confidential Information, the Independent Contractor agrees not to publish, use, make available, sell, disclose, or otherwise disseminate such specific portion(s) or aspect(s) of the Company's Confidential Information without prior written approval of the President or CEO of the Company.
- d) The Independent Contractor acknowledges that the unauthorized disclosure of Confidential Information of the Company may be highly prejudicial to its interests, an invasion of privacy, and an improper disclosure of Trade Secrets.
- e) Independent Contractor agrees not to disclose or communicate, in any manner, either during or after Independent Contractor's Agreement with Company, information about Company, its operations, clientele, or any other information, that relate to the business of Company including, but not limited to, the names of its customers, its marketing strategies, operations, or any other Confidential Information of any kind which would be deemed confidential, a trade secret, a customer list, or other form of proprietary information of Company. Independent Contractor acknowledges that the above information is material and confidential and that it affects the profitability of Company.
- f) Independent Contractor understands that any breach of the confidentiality provisions set forth in this Confidentiality Section (Section 8) of these Terms and Conditions, or that of any other Non-Disclosure Agreement executed between the parties, is a material breach of these Terms and Conditions.
- g) Independent Contractor's confidentiality obligations under Section 8 of these Terms and Conditions shall be continuing until the Confidential Information disclosed to Independent Contractor is no longer confidential as a result of the Confidential Information becoming publicly known through no wrongful act of Independent Contractor.

**8.5 Delivery of Confidential Information** Upon request or when the relationship with the Company terminates, the Independent Contractor will immediately deliver to the Company all copies of any and all materials and writings received from, created for, or belonging to the Company including, but not limited to, those which relate to or contain Confidential Information.

**8.6 Location and Reproduction** The Independent Contractor shall maintain at its workplace only such Confidential Information as the Independent Contractor has a current "need to know." The Independent Contractor shall return to the appropriate person or location or otherwise properly dispose of Confidential Information once that need to know no longer exists. The Independent Contractor shall not make copies of or otherwise reproduce Confidential Information unless there is a legitimate business need of the Company for reproduction.

**8.7 Prior Actions and Knowledge** The Independent Contractor represents and warrants that from the time of the first contact with the Company the Independent Contractor has held in strict confidence all Confidential Information and has not disclosed any Confidential Information, directly or indirectly, to anyone outside the Company, or used, copied, published, or summarized any Confidential information, except to the extent otherwise permitted in these Terms and Conditions.

**8.8 Third Party Information** The Independent Contractor acknowledges that the Company has received and in the future will receive from third parties their confidential information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. The Independent Contractor agrees that it will at all times hold all such confidential information in the strictest confidence and not to disclose or use it, except as necessary to perform the obligations hereunder and as is consistent with the Company's Agreement with such third parties.

**8.9 Confidential Information of Others** Independent Contractor will not disclose to the Company, use in the Company's business, or cause the Company to use, any information or material that is a trade secret of others. Independent Contractor's performance of these Terms and Conditions will not breach any Agreement to keep in confidence proprietary information acquired by Independent Contractor prior to Independent Contractor's relationship by the Company.

**8.10 Protection of Secrecy** Independent Contractor agrees to take all steps reasonably necessary to protect the secrecy of the Confidential Information, and to prevent the Confidential Information from falling into the public domain or into the possession of unauthorized persons.

**8.11 Ownership of Confidential Information** Independent Contractor agrees that all Confidential Information shall remain the property of Company, and that Company may use such Confidential Information for any purpose without obligation to Independent Contractor. Nothing contained herein shall be construed as granting or implying any transfer of rights to Independent Contractor in the Confidential Information, or any patents or other intellectual property protecting or relating to the Confidential Information.

**8.12 Notice of Disclosure** Independent Contractor shall immediately notify Company upon discovery of any loss or unauthorized disclosure of the Confidential Information.

#### **8.13 Confidentiality Obligation Survives Relationship**

- a) Independent Contractor understands that Independent Contractor's obligation to maintain the confidentiality and security of the Company's Confidential Information remains with Independent Contractor even after Independent Contractor's relationship with the Company ends and continues for so long as such material remains confidential.
- b) Independent Contractor understands that Independent Contractor's obligation to maintain the confidentiality and security of the Company's Trade Secrets remains with Independent Contractor even after Independent Contractor's relationship with the Company ends and continues for so long as such material remains a trade secret.

**8.14 Irreparable Harm** Independent Contractor understands that in the event it fails to comply with these Terms and Conditions, Company may suffer irreparable harm which may not be adequately compensated for by monetary damages alone. Independent Contractor, therefore, agrees that in the event of its breach or threatened breach of these Terms and Conditions, Company will be entitled to injunctive and/or other preliminary or equitable relief, in addition to any other remedies available at law, without need to post bond.

**8.15 Remedies** Both parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The Independent Contractor understands that actual or threatened misappropriation of Confidential Information may be enjoined and subject to civil penalties pursuant. Both parties hereby agree that the Company shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. The Company shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Any failure by either party to enforce the other party's strict performance of any provision of these Terms and Conditions will not constitute a waiver of its right to subsequently enforce such provision or any other provision of these Terms and Conditions.

### **9. PROPRIETARY RIGHTS, INVENTIONS AND NEW IDEAS**

**9.1 Definition** The term "Company Creations" includes any and all ideas, processes, trademarks, service marks, inventions, designs, technologies, hardware designs, manufacturing designs, drawings, computer hardware or software, original works of authorship, formulas, discoveries, patents, copyrights, copyrightable works products, marketing and business ideas, and all improvements, know-how, data, rights, and claims related to the foregoing that, whether or not patentable, which are conceived, developed or created which: (1) relate to the Company's current or contemplated business; (2) relate to the Company's actual or demonstrably anticipated research or development; (3) result from any work performed by the Independent Contractor for the Company; (4) involve the use of the Company's equipment, supplies, facilities or trade secrets; (5) result from or are suggested by any work done by the Company or at the Company's request, or any projects specifically assigned to the

Independent Contractor; and/or (6) result from the access to any of the Company's memoranda, notes, records, drawings, sketches, models, maps, customer lists, research results, data, formulae, specifications, inventions, processes, equipment or other materials (collectively, "Company Materials").

## 9.2 Company Ownership

- a) Company Creations which are created (or contributed to) by Independent Contractor as part of Independent Contractor's Services for the Company shall be deemed "works made for hire" under Section 101 of the Copyright Act (17 USC § 101). Full and exclusive rights and ownership in such Company Materials and in any and all related letters patent, trademarks, copyrights, Trade Secrets, Confidential Information and any other proprietary rights which Independent Contractor possesses or is entitled to shall vest in and is hereby assigned to Company as of the date of its creation.
- b) All right, title and interest in and to all Company Creations, including but not limited to all registrable and patent rights which may subsist therein, shall be held and owned solely by the Company, and where applicable, all Company Creations shall be considered works made for hire. The Independent Contractor shall mark all Company Creations with the Company's copyright or other proprietary notice as directed by the Company and shall take all actions deemed necessary by the Company to protect the Company's rights therein.
- c) Independent Contractor agrees that Company Creations, whether or not copyrighted or copyrightable, conceived, made, developed, created or contributed to by Independent Contractor, either individually or jointly, during any relationship by or under any agreement with Independent Contractor and which relate in any manner to the Company's existing or future business interests (regardless of the extent developed at Company facilities, at Independent Contractor's home, or elsewhere), shall be deemed to be a work made for hire initially owned by Independent Contractor and subject to Independent Contractor's obligation to assign it to Company. To the extent that the Company Creations include development of software relating to any of Company's software-related products/Services, such developed software shall constitute a work made for hire as part of an audiovisual work. Independent Contractor shall retain no right, ownership, or title in the Company Creations or in any related letters patent, trademarks, copyrights, Trade Secrets, Confidential Information or any other proprietary rights.

**9.3 Assignment** To the extent that the Work Product Ownership provisions of Section 9.2 do not effectively transfer ownership of the Company Creations, Independent Contractor hereby assigns and agrees to assign to Company, without royalty or any other consideration except as expressly set forth herein, all worldwide right, title and interest Independent Contractor may have or acquire in and to (i) all Materials; (ii) all Innovations (iii) all worldwide patents, patent applications, copyrights, mask work rights, trade secrets rights and other intellectual property rights in any Innovations; and (iv) any and all "moral rights" or right of "droit moral" (collectively "Moral Rights"), that Independent Contractor may have in or with respect to any Innovations. To the extent any Moral Rights are not assignable, Independent Contractor waives, disclaims and agrees that Independent Contractor will not enforce such Moral Rights. Independent Contractor agrees that such assignment shall extend to all languages and include the right to make translations of the Materials and Innovations. Additionally, Independent Contractor agrees, at no charge to Company, but at Company's sole expense, to sign and deliver to Company (either during or subsequent to Independent Contractor's relationship with Company) such documents as Company considers desirable to evidence the assignment of all rights of Independent Contractor, if any, described above to Company and Company's ownership of such rights and to do any lawful act and to sign and deliver to Company any document necessary to apply for, register, prosecute or enforce any patent, copyright or other right or protection relating to any Innovations in any country of the world.

## 9.4 Assignment of Developments

- a) Independent Contractor's "Developments" shall include all: inventions, discoveries, improvements, innovations and ideas (whether or not patentable, copyrightable or otherwise protectable) that Independent Contractor conceives, completes or reduces to practice (whether jointly or with others) and which:
  - Relate to the Company's present or prospective business, or actual or demonstrably anticipated research and development; or
  - Result from any work Independent Contractor do using any equipment, facilities, materials, Trade Secrets or personnel of the Company; or
  - Result from or are suggested by any work that Independent Contractor may do for the Company.
- b) Independent Contractor hereby assigns to the Company or the Company's designee, Independent Contractor's entire right, title and interest in all of the following, that Independent Contractor conceives or makes (whether alone or with others) while engaged by the Company pursuant to these Terms and Conditions:
  - All Developments;
  - All copyrights, Trade Secrets, trademarks and mask work rights in Developments; and

- All patent applications filed and patents granted on any Developments, including those in foreign countries.

**9.5 Maintenance of Records** The Independent Contractor agrees to keep and maintain adequate and current written records of all Company Creations and their development made by the Independent Contractor (solely or jointly with others) during the term of the relationship with the Company. These records will be in the form of notes, sketches, drawings, and any other format that may be specified by the Company. These records will be available to and remain the sole property of the Company at all times.

**9.6 Disclosure and Assignment of Post Engagement Company Creations**

- a) Independent Contractor agrees to promptly disclose to the Company, during the Independent Contractor's engagement with the Company and for twelve (12) months thereafter, all information and records pertaining to any idea, process, trademark, service mark, invention, technology, computer hardware or software, original work of authorship, design, formula, discovery, patent, copyright, product, and all improvements, know-how, rights, and claims related to the foregoing ("Intellectual Property") (including any Intellectual Property that the Independent Contractor does not believe to be a Subject Idea or Invention) that is conceived, developed, or reduced to practice by the Independent Contractor (alone or with others) which relate to any Company Creations.
- b) Independent Contractor hereby assigns to the Company Independent Contractor's entire right, title and interest in any and all such Intellectual Property that is created, conceived, developed or reduced to practice during the 12 month period immediately following the termination of Independent Contractor's engagement with Company, whether made individually or jointly, and which relate to any Company Creations.

**9.7 Access** Because of the difficulty of establishing when any Company Creations are first conceived by the Independent Contractor, or whether it results from the access to Confidential Information or Company Materials, the Independent Contractor agrees that any Subject Idea and Invention shall, among other circumstances, be deemed to have resulted from its access to Company Materials if: (1) it grew out of or resulted from the work with the Company or is related to the business of the Company, and (2) it is made, used, sold, exploited or reduced to practice, or an application for patent, trademark, copyright or other proprietary protection is filed thereon, by the Independent Contractor or with its significant aid, within 12 months after termination of Independent Contractor's engagement with the Company.

**9.8 Assistance** The Independent Contractor further agrees to assist the Company in every proper way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights or other rights or registrations on said Company Creations in any and all countries, and to that end will execute all documents necessary:

- a) To apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and;
- b) To defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection; and;
- c) To cooperate with the Company (but at the Company's expense) in any enforcement or infringement proceeding on such letters patent, copyright or other analogous protection.

**9.9 Authorization to Company** In the event the Company is unable, after reasonable effort, to secure the Independent Contractor's signature on any patent, copyright or other analogous protection relating to a Subject Idea and Invention, whether because of the Independent Contractor's physical or mental incapacity or for any other reason whatsoever, the Independent Contractor hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as its agent and attorney-in-fact, to act for and on its behalf and stead to execute and file any such application, applications or other documents and to do all other lawfully permitted acts to further the prosecution, issuance, and enforcement of letters patent, copyright or other analogous rights or protections thereon with the same legal force and effect as if executed by the Independent Contractor. The Independent Contractor's obligation to assist the Company in obtaining and enforcing patents and copyrights for Company Creations in any and all countries shall continue beyond the termination of the relationship with the Company, but the Company shall compensate the Independent Contractor at a reasonable rate after such termination for time actually spent by the Independent Contractor at the Company's request on such assistance.

**10. NO CONFLICTING OBLIGATIONS**

- a) Independent Contractor represents that he/she has no other current or prior Agreements, relationships or commitments that conflict with these Terms and Conditions or with Independent Contractor's relationship with the Company. The

Independent Contractor further represents that the relationship with the Company does not and will not breach any Agreements with or duties to a former employer or any other third party.

- b) During Independent Contractor's engagement with the Company, Independent Contractor will not engage in any business activity competitive with the Company's business activities. Nor will Independent Contractor engage in any other activities that conflict with the Company's best interests.

## **11. NON-SOLICITATION**

Independent Contractors shall not, during the Agreement and for a period of one year immediately following termination of the contractual working relationship between Independent Contractor and Company, either directly or indirectly, call on, solicit, or take away, or attempt to call on, solicit, or take away, any of the customers or clients of the Company on whom Independent Contractor called or became acquainted with during the terms of these Terms and Conditions, either for their own benefit, or for the benefit of any other person, firm, corporation or organization.

## **12. NON-RECRUIT**

Independent Contractor shall not, during the contractual working relationship between Independent Contractor and Company and for a period of one year immediately following termination of the contractual working relationship between Independent Contractor and Company, either directly or indirectly, recruit any of Company's employees for the purpose of any outside business.

## **13. RETURN OF PROPERTY**

On termination of these Terms and Conditions, or whenever requested by the parties, each party shall immediately deliver to the other party all property in its possession, or under its care and control, belonging to the other party to them, including but not limited to, proprietary information, customer lists, trade secrets, intellectual property, computers, equipment, tools, documents, plans, recordings, software, and all related records or accounting ledgers.

## **14. EXPENSE ACCOUNTS**

Independent Contractor and the Company agree to maintain separate accounts in regards to all expenses related to performing the Services. Independent Contractor is solely responsible for payment of expenses incurred pursuant to these Terms and Conditions unless provided otherwise in writing by an officer of the company. Independent Contractor agrees to execute and deliver any agreements and documents prepared by Company and to do all other lawful acts required to establish document and protect such rights.

## **15. LEGAL COMPLIANCE**

Independent Contractor is encouraged to treat all company employees, customers, clients, business partners and other affiliates with respect and responsibility. Independent Contractor is required to comply with all laws, ethical codes and company policies, procedures, rules or regulations, including those forbidding sex harassment, discrimination, and unfair business practices.

## **16. LICENSING, WORKERS' COMPENSATION AND GENERAL LIABILITY INSURANCE**

Independent Contractor agrees to immediately supply the Company with proof of any licensing status required to perform the Services pursuant to these Terms and Conditions, Workers' Compensation Coverage where required by law and General Liability Insurance, upon request of the Company.

## **17. PERSONS HIRED BY INDEPENDENT CONTRACTOR**

All persons hired by Independent Contractor to assist in performing the tasks and duties necessary to complete the Services shall be the employees of Independent Contractor unless specifically indicated otherwise in an Agreement signed by all parties. Independent Contractor shall immediately provide proof of Workers' Compensation insurance and General Liability insurance covering said employees, upon request of the Company.

## **18. NOTICES**

Any notice to be given hereunder by any party to the other may be affected either by personal delivery in writing, or by mail, registered or certified, postage pre-paid with return receipt requested. Independent Contractor agrees to keep Company current as to their business and mailing addresses, as well as telephone, facsimile, email and pager numbers.



## **19. MEDIATION**

Any controversy between the parties to these Terms and Conditions involving the construction or application of any of the terms, provisions, or conditions of these Terms and Conditions, shall on written request of either party served on the other, be submitted first to mandatory mediation. Said mediation shall comply with and be governed by the provisions of the International Chamber of Commerce Mediation Rules, unless the Parties stipulate otherwise. Place of mediation shall be Alameda, California. Costs of mediation shall be borne equally by both parties.

## **20. ENFORCEMENT**

Independent Contractor agrees that in the event of a breach or threatened breach of these Terms and Conditions, money damages would be an inadequate remedy and extremely difficult to measure. Independent Contractor agrees, therefore, that the Company shall be entitled to an injunction to restrain Independent Contractor from such breach or threatened breach. Nothing in these Terms and Conditions shall be construed as preventing the Company from pursuing any remedy at law or in equity for any breach or threatened breach.

## **21. SUCCESSORS**

The rights and obligations under these Terms and Conditions shall survive the termination of Independent Contractor's service to the Company in any capacity and shall inure to the benefit and shall be binding upon: (1) Independent Contractor's heirs and personal representatives, and (2) the successors and assigns of the Company.

## **22. ENTIRE AGREEMENT**

The Terms and Conditions is an independent document and supersedes any and all other Agreements, either oral or in writing, between the parties hereto, except any Confidentiality, Trade Secret, Non-Compete, Non-Disclosure, Indemnification or Arbitration Agreement. The Terms and Conditions contains all of the covenants and Agreements between the parties, except for those set forth in any Confidentiality, Trade Secret, Non-Compete, Non-Disclosure, or Arbitration Agreement.

## **23. REPRESENTATION**

Independent Contractor represents that it has complied with all Federal, State, and local laws regarding business permits, sales permits, licenses, reporting requirements, tax withholding requirements, and other legal requirements of any kind that may be required to carry out said business and the Services which is to be performed as an Independent Contractor pursuant to these Terms and Conditions. Independent Contractor is or remains open to conducting similar tasks or activities for clients other than the Company and holds themselves out to the public to be a separate business entity.

## **24. PARTIAL INVALIDITY**

If any provision of these Terms and Conditions is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

## **25. GOVERNING LAW**

The Terms and Conditions shall be governed by, and construed under, the laws of the State of California.

## **26. ACKNOWLEDGEMENT**

Independent Contractor has carefully read and considered all provisions of these Terms and Conditions and agrees that all of the restrictions set forth are fair and reasonably required to protect the Company's interests. Independent Contractor acknowledges that he/she has received a copy of these Terms and Conditions as signed by him/her.

## **27. CONFLICTS**

In the event there is any conflict or inconsistency between these Terms and Conditions and the terms and conditions of a separate, fully executed Independent Contractor Agreement between Company and Independent Contractor, the terms and conditions of the fully executed Independent Contractor Agreement shall govern and control the rights and obligations of the parties.

## **28. HOW TO CONTACT US**

Any questions or inquiries relating to these Terms and Conditions should be directed to:

ATTN: IC Terms & Conditions Kai Concepts, LLC 1651 Viking St #3, Alameda, CA, 94501 USA

