

Sales Consultant Agreement

This is a Sales Consultant Agreement (“Agreement”) dated as of _____, 20__ between [_____] (“Client”), a California nonprofit corporation, and _____ (“Consultant”).

Background

- A. Client is a nonprofit corporation whose mission is to [_____].
- B. In line with its mission, Client provides [*describe products and services*], including [_____]. Client wishes to retain Consultant to [promote awareness and] solicit sales of its products and services on the basis set out in this Agreement.

Client and Consultant agree as follows:

1. Appointment

1.1 Appointment

Client appoints Consultant as a sales representative to promote and solicit sales of the Client products (“Products”) and services (“Services”) listed in the plan attached as **Exhibit A** (“Plan”), [into the _____ markets] in the geographic territory (“Territory”) specified in the Plan.

1.2 Promotion

Consultant will identify prospective customers, promote, and solicit sales of the Products and Services in the Territory on behalf of and in the name of Client, at prices and on terms established by Client in accordance with Section 3.1.

1.3 Compensation

In exchange for Consultant’s services, Consultant will be entitled to Commissions defined and described in Section 4.1.

1.4 Training

Consultant will complete all training on the demonstration, use, and sales process for the Products and Services which Client may require. Consultant will be solely responsible for its expenses incurred in attending any training.

1.5 Loyalty

Consultant may not represent, promote, or solicit sales of any products and services that compete with or are substantially similar to any of the Products and Services.

2. Customers and Marketing

2.1 Customers and Territory

Consultant will be entitled to receive Commissions only for customers located in the Territory. Consultant acknowledges that Client may permit others, including multi-state and national organizations, to promote and solicit sales of the Products and Services in the Territory. Client may engage in discussions or other direct contact with any current, former, or prospective customers of Client, without prior notice to Consultant. Client may also directly sell its Products and Services into the Territory through the Client website. Client, in its sole discretion, will resolve disputes regarding whether a particular sale should be attributed to Consultant or not. Consultant may not promote or solicit sales of Products and Services to [_____], or to [the military or other government entities], unless Client consents in writing.

2.2 Marketing Materials

Client will provide Consultant with: (i) technical information regarding the Products and Services; (ii) outreach and marketing materials pertaining to Client and the Products and Services; and (iii)

reasonable notice of any changes in the Products or Services, prices, or other material terms and conditions. If Consultant develops or creates his, her, or its own marketing materials to promote Products and Services, then Consultant will follow any applicable quality standards or guidelines set by Client, provide Client with drafts, and obtain Client's written consent prior to using such marketing materials.

2.3 Samples and Demonstrations

Client may provide Consultant with Product samples, demonstration access to the Services, documents, tools, brochures, banners, trade show materials, or other marketing materials for use with prospective customers. Consultant will not use these materials for any other purpose. Consultant will use these materials in the form provided and in accordance with any applicable quality standards or guidelines set by Client. Consultant will return these materials to Client upon its reasonable request. If a prospective customer requests a demonstration of any Product or Service, Consultant will so notify Client, and Consultant and Client will cooperate to provide the demonstration.

2.4 Sales Activity Reports

Consultant will provide quarterly reports to Client about Consultant's promotion and sales activities, including, without limitation, information about completed demonstrations, quote requests and submissions, prospective customers that have been contacted, and pending sales. These reports will be in such form and substance as Client may reasonably request. All information gathered by Consultant regarding customers, prospective customers, and orders for Products and Services will be the sole property of Client.

3. Orders

3.1 Pricing and Terms

Consultant will solicit sales of Products and Services only at the prices and on the terms established by Client, which Client may, in its sole discretion, change at any time. Consultant may not offer any pricing discounts or different terms unless Client consents in writing. Consultant may not change, limit, or otherwise modify representations or warranties, if any, made by Client in connection with the Products and Services beyond those expressly contained in Client's then-current standard form agreements for the applicable Products and Services.

3.2 Orders

Consultant will send all orders for Products or Services directly to Client. Client may accept or reject any order in its sole discretion. If Client decides to accept an order, Client will notify Consultant and directly contact the customer to confirm and fulfill the order.

3.3 Sales and Order Procedures; Receipt of Payment

Consultant will comply with any sales lead and order entry procedures established by Client. Consultant will not accept any payment on behalf of, or in the name of, Client. If Consultant inadvertently receives any payments from any customer, Consultant will promptly forward such payments to Client.

3.4 Invoicing and Delivery

Client will (i) deliver invoices for Products and Services directly to customers; (ii) deliver Products and Services to customers; and (iii) upon request, provide Consultant with copies of invoices sent by Client to customers that ordered through Consultant.

3.5 Product and Service Offering

Client may, in its sole discretion, change, improve, expand, or discontinue any or all of the Products and Services at any time.

4. Commission and Expenses

4.1 Commission

Consultant will be entitled to a sales commission (“Commission”) for customer orders of Products or Services that are submitted by Consultant and accepted by Client. The rate at which Commission is calculated is specified in the Plan. Consultant will be entitled to receive the Commission at the time Client recognizes revenue (which may differ from the time Client actually receives revenue from the customer) for the applicable Products or Services in accordance with Client accounting practices. Client reserves the right to make changes to its accounting practices in its sole discretion. The Commission will be Consultant’s sole compensation under this Agreement.

4.2 Commission Payment

Subject to Section 4.4, Client will make Commission payments to Consultant within sixty (60) days following the date on which Client recognizes revenue for the relevant Product or Service.

4.3 Renewals

To the extent specified in the Plan, Consultant may be entitled to receive Commission for revenue attributable to a renewal period if a customer that first ordered a Service through Consultant renews its subscription to Client’s Service for a second [_____] -year term. [Consultant will not be entitled to any further commissions for subsequent renewals.] No further Commissions will be paid for additional orders by such customer of any other Client Products or Services.

4.4 Returns or Refunds

If Client has to adjust previously recognized revenue because a customer returns a Product, cancels an order for a Product or Service, or Client otherwise refunds any amount to a customer that ordered a Product or Service through Consultant, then Client will deduct from any sums due to Consultant an amount equal to the Commission (or applicable portion) previously paid or credited to Consultant for the original order. If Client is not able to offset the amount from amounts to be paid to Consultant within six (6) months after making the adjustment to its revenue, then Consultant will, within ten (10) days of Client’s request, pay to Client the amount (or applicable portion) of Commission credited or paid to the Consultant for the original order.

4.5 Expenses

Except for as may be specified in the Plan, Consultant is responsible for its own expenses in carrying out activities under this Agreement, including, without limitation, phone calls to customers or prospective customers, postage, travel, meals, or other business expenses.

4.6 Commission Dispute Resolution

If Consultant has questions about the calculation of Commission, Consultant will notify Client in writing. Client will not be responsible or liable for any error, omission, or problem in connection with any underpayment or non-payment of any Commission for any order unless Consultant reported it to Client in writing within thirty (30) days after Client paid the Commission to Consultant. Client decisions regarding any questions about the calculation of Commission will be final.

5. Intellectual Property and Confidentiality

5.1 Intellectual Property Rights; Ownership

This Agreement does not assign, transfer, convey, or license to the Consultant any intellectual property rights of Client or any of its affiliates or licensors, including, without limitation, those in or related to any Products or Services and any rights under any patent, trademark, copyright, or trade secret. Client owns and retains all rights, title, and interest in the Client Marks (defined in Section 5.2), Products and Services and any other proprietary know-how or methodologies used to develop the Products and Services. Consultant will not, directly or indirectly, modify, translate, or adapt any Product or Service, including any underlying software, create any derivative works based on any Products or Services, disassemble, decompile, or reverse engineer any of the Products and Services or software or any component for any purpose.

5.2 Trademark License

Client grants to Consultant a limited, non-exclusive, nontransferable, and non-assignable license to use the Client trademarks, service marks, and logos provided to Consultant ("Client Marks"), solely in the Territory to promote Products and Services in accordance with this Agreement. Consultant will use Client Marks in the form provided and in accordance with any applicable trademark usage standards or guidelines set by Client.

5.3 Confidentiality

Consultant will use Confidential Information (defined below) only in connection with Consultant's activities under this Agreement and will keep it confidential. "Confidential Information" means all information, in any form, relating to Client and furnished to or obtained by Consultant during the course of Consultant's activities under this Agreement, including, without limitation, information about current, former, or prospective customers, budget and other financial data, cost information, discounts, product or service plans and strategies, marketing information, technical data and research, trade secrets, and know-how. Confidential Information does not include information that is generally available to the public, information already known to Consultant before entering into this Agreement, or information Consultant independently develops.

6. Relationship

6.1 Method of Work

Consultant will have sole discretion over, and sole responsibility for, the planning, method, means, sequencing, time, and place of the work Consultant performs under this Agreement. In performing under this Agreement, Consultant will use diligent efforts and perform in a timely and professional manner consistent with industry standards, applicable law, and any applicable quality standards or guidelines set by Client. Consultant will not engage in any activity or action that may damage the reputation of Client or its Products and Services.

6.2 Independent Contractor

Consultant is and will be an independent contractor. Nothing in this Agreement creates an employment, partnership, joint venture, fiduciary, or similar relationship between Consultant and Client for any purpose. Consultant will have no authority to bind or obligate Client in any manner whatsoever. This is not an exclusive agreement. Consultant and Client are free to do business with others, except as provided in Section 1.5.

6.3 No Entitlement to Benefits

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

6.4 Taxes, Contributions, and Workers' Compensation

Client will provide to Consultant a 1099 form for tax purposes if Consultant has received \$600 or more from Client in a given year. Consultant will have sole responsibility for all tax returns and payments required by any federal, state, or local tax authority in connection with Consultant's performance under and receipt of Commissions under this Agreement. Consultant will have sole responsibility for paying all disability, unemployment insurance and workers' compensation contributions and expenses, and any other contributions and expenses, in connection with Consultant's performance under and receipt of Commissions under this Agreement. Consultant understands that Client will not withhold income, social security, or Medicare taxes, make unemployment or disability insurance contributions, or obtain workers' compensation or other insurance on Consultant's behalf.

6.5 Recordkeeping

Consultant will maintain books and records in a manner that provides Client with sufficient detail to review Consultant's activities under and Consultant's compliance with this Agreement, and make them available for review by Client on reasonable notice. Upon Client's request, Consultant will

provide Client with copies of all correspondence Consultant sends to Client's customers or prospective customers, including, without limitation, all letters, e-mails, quotes, and proposals.

7. Insurance, Indemnification, and Liability

7.1 Insurance

Consultant will be responsible for Consultant's own insurance coverage. If requested by Client, Consultant will obtain insurance and proof of insurance as described in the Plan.

7.2 Indemnification

Consultant will defend, indemnify and hold Client, and its directors, officers, employees, agents, and assigns (collectively, the "Client Parties"), harmless against all claims, liabilities, losses, damages, and expenses, including, without limitation, attorneys' fees and insurance contributions for which Consultant has responsibility, plus penalties and interest, any Client Party may suffer and which arise directly or indirectly from (i) Consultant's performance under or breach of Agreement; (ii) any claims by employees, contractors, or other persons in a relationship with Consultant; (iii) any claims related to tax, insurance contributions, workers' compensation law, or other laws applicable to Consultant; or (iv) any unauthorized representations, warranties, or promises made by Consultant to customers or potential customers for Products and Services. Consultant will have no obligation to indemnify Client Parties to the extent the liability is solely caused by an Client Party's gross negligence or willful misconduct.

7.3 Limitation of Liability

In no event will Client be liable to Consultant for any consequential, incidental, indirect, punitive, exemplary, or special damages arising out of or relating to this Agreement, regardless of the basis of the claim and even if Client has been advised of the possibility of such damage. In no event will the total aggregate liability of AIA to Consultant or of any person arising out of or relating to this Agreement exceed the total amounts paid to Consultant under this Agreement in the twelve (12) months prior to the event or circumstances giving rise to such liability.

7.4 Warranty Disclaimer

No warranty of any nature, as to the Products and Services, including, without limitation, the implied warranties of title, merchantability, fitness for a particular purpose or non-infringement of third party rights, will run from Client to Consultant under any circumstances.

8. Termination

8.1 Termination on Notice

Either Client or Consultant may on its own terminate this Agreement by providing written notice of that decision to the other. Such a termination will be effective sixty (60) days after receipt of notice by the non-terminating party.

8.2 Termination for Breach

If either party breaches any of its obligations under this Agreement, the non-breaching party may provide the breaching party with written notice of the breach. If the breaching party fails to cure the breach within fifteen (15) days after receipt of such notice, the non-breaching party may terminate this Agreement upon delivery to the breaching party of a written notice to that effect, with the termination effective upon receipt of such notice by the breaching party. The non-breaching party may in its reasonable discretion determine whether the breach has been cured.

8.3 Consequences of Termination

Upon termination of this Agreement, Consultant will immediately discontinue its promotion of Products and Services and its use of Client's materials, name, Client Marks and, on Client's request, will return to Client all Client materials, including, without limitation, any Confidential Information and materials described in Sections 2.3, 2.4 and 2.5. Consultant will be entitled to receive Commissions for any orders accepted by Client and expense reimbursement in accordance

with this Agreement until the effective date of termination. Client and Consultant will cooperate in transition activities and will use reasonable efforts to minimize interruption and any adverse impacts of the termination. Sections 5.1, 5.3, 6.5, 7.2, 7.3, 7.4, 8.3 and 9 will survive termination of this Agreement.

9. General Provisions

9.1 Compliance with Law

Consultant will comply with all federal, state and local laws relating to the performance of obligations under this Agreement, including applicable licensing laws and regulations.

9.2 Entire Agreement; Amendments

This Agreement, together with the Plan, expresses Consultant's and Client's final, complete, and exclusive agreement, and supersedes any and all prior or contemporaneous written and oral agreements, arrangements, negotiations, communications, course of dealing or understanding between Consultant and Client relating to its subject matter. This Agreement may be amended only as stated in and by a writing signed by both Consultant and Client, which recites that it is an amendment to this Agreement. Client rejects any term or condition in any invoice, letter, e-mail, or other document which conflicts with or adds to this Agreement. If there are any inconsistencies between the Plan and this Agreement, this Agreement will control.

9.3 Severability; Waiver

If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law. Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

9.4 No Assignment; No Third Party Beneficiaries

Consultant may not assign its rights or delegate its duties under this Agreement to anyone else without Client's prior written consent. Consultant may not subcontract any of its obligations under this Agreement without Client's prior written consent. Except as provided in Section 7.2, this Agreement is for the exclusive benefit of Consultant and Client and not for the benefit of any third party including, without limitation, any employee, affiliate, or customer of Consultant or Client.

9.5 Notices

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

9.6 Injunctive Relief

Client and Consultant each recognize that a breach of Section 2.3, 2.4, 5.2, or 5.3 may cause irreparable harm to Client and that actual damages may be difficult to ascertain and in any event may be inadequate. Accordingly, the parties agree that in the event of such breach, Client may be entitled to injunctive relief in addition to such other legal or equitable remedies as may be available.

9.7 Governing Law; Jurisdiction

This Agreement is governed by California law. Consultant and Client consent to the exclusive jurisdiction of the state and federal courts for [_____] County, California.

9.8 Counterparts

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

* * * * *

Consultant and Client signed this Agreement as of the date stated in its first paragraph:

[Name of Client]

[Name of Consultant]

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Exhibit A
Plan

Consultant data and contact person

Consultant name	[insert name of entity, if applicable]
Consultant address	
Consultant contact	Name: Title: E-mail: Telephone:
Consultant tax ID	

Client data and contact person

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

Products and Services

Products	
Services	

Territory

Territory	[specify]
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Commission

Commission rate	[__% of initial sales to new customers] [__% of revenue for ____ years, if a customer introduced by Consultant renews] Shipping, handling, taxes, or other charges, costs or expenses will not be included when calculating the Commission.
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Expense reimbursement

Expenses	Client will reimburse Consultant for: <ul style="list-style-type: none">• [registration fees and travel expenses (mileage and lodging) for tradeshow that Consultant attends solely on Client's behalf, following prior approval of Client.]• [describe any other relevant expenses here]
Payment timing	Client will reimburse Consultant within 30 days after receipt of an invoice (accompanied by receipts) for such expenses.

Consultant insurance (if applicable)

Consultant insurance requirements	[state insurance requirements]
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Other terms (if applicable)

Other terms	[state other terms]
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