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*REVIEW OF CONTRACT LANGUAGE
FOR CONSULTANTS*

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IEEE-CNSV CPP

Smart Consultants Are Prepared and Review Documents



LEARNING OBJECTIVES

Become familiar with some basic contract language commonly encountered by consultants in:

Consulting Agreements

NDA/Confidentiality Agreements

Partnership Agreements

Corporation Bylaws

Commercial Leases

Insurance Policies

Employee Handbooks

Biography

Jonathan J. Sweet is a Martindale-Hubbell AV-rated (highest rating possible) practicing litigation and transactional attorney in San Jose, CA. Jonathan regularly represents consultants and small businesses. He is the author of two law books, SWEET ON CONSTRUCTION INDUSTRY CONTRACTS/MAJOR AIA DOCUMENTS, (7th Ed., Wolters Kluwer Law & Business, 2020) and AVOIDING OR MINIMIZING CONSTRUCTION LITIGATION (John Wiley & Sons, 1993)

From 2002 to 2015, Jonathan regularly lectured for Lorman Education Services on legal subjects. Jonathan has taught law courses at the University of San Francisco School of Law, San Jose State, and Lincoln Law School of San Jose. He received his B.A. Degree from the University of California, Berkeley in 1978, and his J.D. Degree from the University of San Francisco in 1985. 1991-2016 he provided volunteer service to the Santa Clara County Superior Court.

He has been an affiliate member of CNSV for 12 years.

There are three major aspects to the work that Mr. Sweet does:

1. Drafting and reviewing legal documents for clients;
2. Litigating and arbitrating disputes about payment and performance;
3. Acting as a Mediator or Arbitrator with parties with disputes.

Carefully Consider Choices on Document Language



Operating guidelines for consultants

1. Choose Carefully Who You Work With (partners and clients)
2. Set Up and Operate Your Business Properly
3. Separate Your Business and Personal Assets
4. Get Insurance
5. Understand Your Contracts

Guidelines

- ▶ 6. Use the Legal System Carefully
- ▶ 7. Seek Attorney Help When Needed
- ▶ 8. Understand Bankruptcy

Keep Assets Such as Your Home Safe



Forms of Association

Sole Proprietorship

General Partnership

Corporation

Limited Partnership

Unincorporated Association

GENERAL PARTNERSHIP WRITTEN AGREEMENTS

Partnerships should have written partnership agreements to accurately document the parties' understandings

PARTNERSHIP ISSUES

Time devoted to partnership

Sharing of Profits, Expenses

How to Terminate Partnership

Capital Contributions

Selection of Managing Partner

Process of Dissolution or Buyout of Shares

Operation of Corporation

Those licensed under the Business and Professions Code such as engineers, doctors, accountants, attorneys, cannot be traditional corporations, only professional corporations or LLP's; one exception is now construction contractors, as of a few years ago

Follow formalities to avoid personal liability for non-professional risks

CHECK BACKGROUNDS

- ▶ Do background research on the other parties to projects
- ▶ Do a search on the internet to get information about those with whom you are going to work
- ▶ If a professional such as an engineer, doctor, lawyer, accountant, verify proper licensing, lack of claims or discipline

STAY ON TOP OF RECEIVABLES

Every time you agree to perform work, you are extending credit to the other parties

If you accept excuses for non-payment for too long, you may lose legal rights

EXERCISE YOUR LEGAL RIGHTS

- ▶ If parties are not paying you for work, or if you are working on a project where there is substantial disagreement about issues, you need to consult with legal counsel about what rights and remedies exist to resolve the issues
- ▶ Parties who may owe you money are more likely to pay you earlier if you demonstrate a willingness to exercise your legal rights. Unfortunately, you may have to make a business decision between maintaining a friendly relationship with other parties on a project, and making sure you protect your rights to get paid

Insurance

Ascertain and obtain the insurance you need, based on your type of business and risks

General Liability vs. Errors and Omissions Insurance

Occurrence Insurance

Claims Made Insurance

In addition, if a claim is made against you, you need to locate and review all applicable insurance policies and take steps to notify your insurance company

Contract Clauses

Liability Limitation clauses

Arbitration and Mediation clauses

Definition of Basic and Additional Services

Attorneys' fee clauses

Indemnity Clauses

Indemnity clauses transfer risk from one party to another

Consulting contracts often contain indemnity clauses whereby you agree to indemnify your client for losses, and which are very broadly worded

Such clauses may be deleted, or made mutual

Review of Specific Types of Documents

Consulting Agreement

NDA/Confidentiality Agreement

Partnership Agreement

Corporation Bylaws

Commercial Lease

Insurance Policy

Employee Handbook

Consulting Agreements

Jim Jones shall be the individual at Consultant providing the consultant services to Company, unless otherwise agreed to in writing, and signed by both parties.

If any services, functions or responsibilities not specifically described in this Agreement or a Statement of Work are required for the proper performance and provision of the Services, they shall be deemed to be included within the scope of Services to the same extent as if specifically described in this Agreement.

Payment

In consideration of the Consulting Services to be performed by Consultant under this Agreement the Company will pay Consultant at the rate of \$150.00 per hour for time spent on Consulting Services. Consultant shall submit written, signed monthly invoices that specify the time spent performing Consulting Services, itemize the dates on which services were performed, include the number of hours spent on such dates, and include a brief description of the services rendered.

The Company shall pay Consultant the amounts due pursuant to submitted reports within 30 days after such invoices are received by the Company.

Expenses

Unless otherwise agreed by the parties, the Company shall reimburse Consultant for reasonable travel and other business expenses that are incurred by Consultant in the performance of the Services and are approved in advance by Company, in accordance with Company's general policies, as may be amended from time to time.

Consultant shall provide Company with an itemized list of all such expenses and supporting receipts with each invoice therefor.

Unpaid invoices shall bear interest at the rate of 1.5% per month from the 30th day when payment was due.

Independent Contractor

Nothing contained herein or any document executed in connection herewith, shall be construed to create an employer-employee partnership or joint venture relationship between the Company and Consultant. Consultant is an independent contractor and not an employee of the Company or any of its subsidiaries or affiliates.

The consideration set forth in Section 2 shall be the sole consideration due Consultant for the services rendered hereunder. It is understood that the Company will not withhold any amounts for payment of taxes from the compensation of Consultant hereunder.

AB5 Issues; Those performing Work Are Likely to be considered Employees

Dynamex, New California law makes it much harder to be considered independent contractors

Idea was to have Uber and Lift drivers get employee benefits such as disability insurance, unemployment insurance, sick time, vacation time

Simplest way to address for a person who wishes to retain independent contractor status is to form own corporation, such as LLC

This way, payroll taxes are being paid by your corporation

A lot of objections to AB5 law

Some information indicates that lawmakers, who created a large exception for licensed professionals, believed that engineers were usually licensed

In fact, most engineers in high-tech are not licensed by the State of California

Not Employee

Consultant will not represent to be or hold himself/herself out as an employee of the Company and Consultant acknowledges that he/she shall not have the right or entitlement in or to any of the pension, retirement or other benefit programs now or hereafter available to the Company's regular employees.

Any and all sums subject to deductions, if any, required to be withheld and/or paid under any applicable state, federal or municipal laws or union or professional guild regulations shall be Consultant's sole responsibility and Consultant shall indemnify and hold Company harmless from any and all damages, claims and expenses arising out of or resulting from any claims asserted by any taxing authority as a result of or in connection with said payments.

Confidentiality

Consultant shall sign, or has signed, a Proprietary Information and Inventions Agreement, in the form attached to this Agreement as Exhibit A (the “Confidentiality Agreement”), on or before the date Consultant begins providing the Consulting Services.

Indemnification

Each party hereby agrees to indemnify and hold the other party harmless from and against any and all liabilities, losses, damages, costs, and expenses (including without limitation reasonable attorneys' fees) related to (i) such party's breach of any obligation, representation or warranty under this Agreement, or (ii) the negligent act or omission of such party or any of its officers, directors, members, managers, employees, agents, representatives or contractors

This a mutual clause, rather than a one-way clause, under which you, as the consultant would agree to indemnify the client, but the client would not be agreeing to indemnify you

Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES OF ANY KIND, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, AND REGARDLESS OF WHETHER THERE HAS BEEN A NOTIFICATION OF THE POSSIBILITY OF SUCH DAMAGES. A PARTY'S MAXIMUM AGGREGATE LIABILITY FOR ANY DAMAGES CLAIM REGARDING THIS AGREEMENT WILL NOT EXCEED THE VALUE RECEIVED BY SUCH PARTY HEREUNDER.

Attorneys' Fees, Notices

In the event of any dispute regarding the terms and duties of the parties under this agreement, the prevailing party in any litigation or arbitration shall be entitled to recover its attorneys' fees, expert fees, and legal costs associated with resolving the dispute.

Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the first class mail of the United States properly addressed to the appropriate party at the address set forth below. Email to the below email addresses will also constitute sufficient notice. If email addresses change, or responsible individual changes for each party, that party shall update the other party with that information.

Entire Agreement

This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and replaces and supersedes all other agreements or understandings, whether written or oral.

No amendment or extension of this Agreement shall be binding unless in writing and signed by both parties.

Applicable Law and Venue, Execution

This Agreement shall be governed by the laws of the State of California. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any legal action to be filed, or arbitration to be had regarding any dispute shall be brought in Santa Clara County, California.

EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, SUCH PARTY HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

This Agreement may be executed in several counterparts, all of which shall constitute one agreement.

Pay Attention to Contract Language; It Can Be Critical



Non-Disclosure Agreements

As a part of CONSULTANT's work for CLIENT, CONSULTANT agrees that he or she has received, or will receive certain confidential, proprietary and/or trade secret information owned by CLIENT.

CONSULTANT acknowledges that this CLIENT information he or she acquired or will acquire while doing work for CLIENT derives economic value, actual or potential, from not being generally known to others in the relevant industry or industries. Such technical, non-technical, and business information may include information relating to CLIENT's business, products, processes, pricing, customers and distributors.

CONSULTANT agrees not to use or disclose such confidential CLIENT information to anyone outside of CLIENT's organization without prior permission from CLIENT.

Confidentiality, Non-Disclosure, Trade Secret

CONSULTANT agrees that such unauthorized use or disclosure of CLIENT's confidential or proprietary information would be adequate cause for immediate termination of any business relationship with CLIENT.

CONSULTANT agrees that CLIENT may suffer irreparable injury and damage should CONSULTANT violate the terms of this agreement, for which money damages would be insufficient. (Explain)

Termination of the business relationship between CLIENT and CONSULTANT as a result of CONSULTANT'S unauthorized and improper disclosure or use of CLIENT'S trade secret or proprietary information shall not limit or prohibit any remedies otherwise available to CLIENT as a result of such disclosure or use by CONSULTANT of trade secret or proprietary information of CLIENT.

General Partnership Agreement Language

The Partnership commenced on the filing of the Certificate of General Partnership in accordance with the California Act and will continue in existence until the close of Partnership business on [date of termination], or until the earlier termination of the Partnership in accordance with the provisions of Article XIII.

Purpose of Partnership

The purpose and nature of the business to be conducted by the Partnership is:

(a) [description of primary business activity] and to exercise all of the rights and powers conferred on the Partnership pursuant to this Agreement or by law relating to thereto;

(b) [OPTIONAL: to engage in any other business activity that may be proposed by the General Partner and approved by the General Partners as provided in Article [designation of article]. The General Partner has no obligation or duty to the Partnership or the General Partners to propose or approve, and in its sole discretion may decline to propose or approve, the conduct of any businesses by the Partnership].

Capital Contribution

In connection with the formation of the Partnership under the California Act, the General Partner has made an initial Capital Contribution to the Partnership in the amount of \$_____ for its interest as general partner in the Partnership and has been admitted as the sole general partner of the Partnership. The Initial General Partner has made an initial Capital Contribution to the Partnership in the amount of \$[dollar amount of initial contribution] for an interest in the Partnership and has been admitted as a General Partner of the Partnership.

Additional Contributions

(a) On the Closing Date, the General Partner will contribute, transfer, convey, assign, and deliver to the Partnership the property and other rights described in the Contribution Agreement, which contribution will be in exchange for (i) the continuation of its general partner interest in the Partnership consisting of a Partnership Interest representing a 1.01% Percentage Interest, (ii) a General Partner interest in the Partnership representing a Percentage Interest determined in accordance with the formula described in the Contribution Agreement, and (iii) the Partnership's assumption of, or taking of assets subject to, certain indebtedness and other liabilities, including the Partnership's assumption of the indebtedness described in the Contribution Agreement.

No Withdrawals, Loans to Partnership

No Partner will be entitled to withdraw any part of its Capital Contributions or its Capital Account or to receive any distribution from the Partnership, except as provided in Articles V, VII, XII, and XIII.

Any funds advanced by a Partner to the Partnership in excess of the amounts required or permitted hereunder to be contributed by the Partner to the capital of the Partnership, will constitute debt obligations of the Partnership and will not constitute capital contributions or result in any increase in the amount of the Capital Account of the Partner. Advances will be payable out of Partnership assets pursuant to terms and conditions agreed upon at the time the advances are made.

General Partner Duties

The General Partner will conduct, direct, and manage all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership are exclusively vested in the General Partner, and the General Partners have no right of control or management over the business and affairs of the Partnership. In addition to the powers now or hereafter granted a general partner of a General partnership under applicable law or that are granted to the General Partner under any other provision of this Agreement, subject to Section 6.3, the General Partner will have full power and authority to do whatever things on whatever terms it may deem necessary or appropriate in its sole discretion to conduct the business of the Partnership, to exercise all powers set forth in Section 3.2 and to effectuate the purposes set forth in Section 3.1, including, without limitation:

General Partner Duties (cont.)

(i) the making of any expenditures, the lending or borrowing of money, the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness and the incurring of any other obligations;

(ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;

(iii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation, or exchange of any or all of the assets of the Partnership or the merger or other combination of the Partnership with or into another Person (the matters described in this clause (iii) being subject, however, to any prior approval that may be required by Section 6.3);

(iv) the use of the assets of the Partnership (including cash on hand) for any purpose consistent with the terms of this Agreement, including the financing of the conduct of the operations of the Partnership, the lending of funds to other Persons (including, Affiliates or Subsidiaries of the General Partner), and the repayment of obligations of the Partnership;

General Partner Duties (cont.)

(v) the negotiation, execution, and performance of any contracts, conveyances, or other instruments (including instruments that limit the liability of the Partnership to all or particular of its assets, or that limit the liability of the General Partner to its interest in the Partnership, and this authority is expressly given even though the terms of those instruments may be materially less favorable to the Partnership than would have been the case if liability had not been so General);

(vi) the distribution of Partnership cash;

(vii) the selection and dismissal of employees (including, but not General to, employees having titles such as “president,” “vice president,” “secretary,” and “treasurer”) and agents, outside attorneys, accountants, consultants, and contractors and the determination of their compensation and other terms of employment or hiring;

Duties

(viii) the maintenance of insurance for the benefit of the Partnership and the Partners (including the assets of the Partnership) in amounts it deems necessary or appropriate;

(ix) the formation of, or acquisition of an interest in, and the contribution of property and the making of loans to, any General Partner or general partnerships, joint ventures, corporations, General liability companies, or other entities;

(x) the control of any matters affecting the rights and obligations of the Partnership, including, but not limited to, the bringing and defending of actions at law or in equity and otherwise engaging in the conduct of litigation and the incurring of legal expense and the settlement of claims and litigation; and

(xi) the indemnification of any Person against liabilities and contingencies to the extent permitted by law.

General Partner Reimbursement

The General Partner will be reimbursed on a monthly basis, or any other basis the General Partner, in its sole discretion, determines, for (i) all direct and indirect expenses incurred or payments made on behalf of the Partnership (including salary, bonus, incentive compensation, and other amounts paid to any Person to perform services for the Partnership or for the General Partner in the discharge of its duties to the Partnership), and (ii) all other necessary or appropriate expenses allocable to the Partnership or otherwise reasonably incurred by the General Partner in connection with operating the Partnership's business (including expenses fairly allocable to the General Partner incurred by its Affiliates).

The General Partner may determine the fees and expenses allocable to the Partnership in any reasonable manner in its sole discretion. Reimbursement under this Section 6.4 is in addition to any reimbursement under Section 6.7.

Partners Engaging in Business of Partnership

Each Indemnitee (specifically including the General Partner) will have the right to engage in businesses of every type and description and to engage in and possess an interest in other business ventures of any and every type or description, independently or with others, including business interests and activities (other than Restricted Activities) in direct competition with the business and activities of the Partnership, and none of the same will constitute a breach of this Agreement or any duty to the Partnership or to any General Partner.

No General Partner will have any right by virtue of this Agreement or the relationship established hereby, in or to any business ventures of any Indemnitee (subject, in the case of the General Partner, to Section 6.5(b)) nor will any Indemnitee have any obligation to offer any interest in any such business ventures to the Partnership or to any General Partner.

Indemnity of Partners by Partnership

To the fullest extent permitted by law (but subject to the limitations expressly provided in this Agreement), the Partnership will indemnify and defend the Indemnitees and each of them from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements, and other amounts arising from any and all claims, demands, actions, suits, or proceedings, whether civil, criminal, administrative, or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise,

(cont.)

by reason of its status as (i) the General Partner, a Departing Partner, or any of their Affiliates, (ii) an officer, director, employee, partner, agent, or trustee of the Partnership, the General Partner, any Departing Partner or any of their Affiliates, or (iii) a Person serving at the request of the Partnership in another entity in a similar capacity, provided that in each case the Indemnitee acted in good faith and in a manner that the Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Partnership and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful.

Partnership Indemnity only to Extent of Partnership Assets

Any indemnification pursuant to this Section 6.7 may be made only out of the assets of the Partnership, it being agreed that the General Partner will not be personally liable for any indemnification and will have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate any indemnification.

Reliance by Third Parties

Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership will be entitled to deal with the General Partner as if it were the Partnership's sole party in interest, both legally and beneficially, and to assume that the General Partner has full power and authority to contract on behalf of, and to encumber, sell, or otherwise deal in any manner with the assets of, the Partnership.

The General Partners hereby waive any defenses or other remedies that may be available against third parties to contest, negate, or disaffirm any actions of the General Partner based on a lack of actual or apparent authority or otherwise.

Successor General Partner

The General Partner may not transfer all or any part of its Partnership Interest as the general partner in the Partnership except as provided in Article XII of this Agreement. A successor General Partner approved pursuant to Section 12.1 or 12.2 will, subject to compliance with the terms of Section 12.3, if applicable, be admitted to the Partnership as the successor General Partner, effective immediately prior to the withdrawal or removal of the General Partner pursuant to Section 12.1 or 12.2.

Successor General Partner

Any such successor will, subject to the terms of this Agreement, carry on the business of the Partnership without dissolution. The admission of a successor General Partner will be subject to the successor General Partner executing and delivering to the Partnership an acceptance of all of the terms and conditions of this Agreement and any other documents or instruments that may be required to effect the admission.

Removal of General Partner

The General Partner may be removed by the vote or written action of General Partners then owning of record a Majority in Interest. The General Partners will have the right to elect one or more new general partners in place of the removed General Partner at any time within [number of months] months following the effective date of removal by the vote or written action of a Majority in Interest.

Any successor General Partner elected in accordance with the terms of this Section 12.2 will be subject to the provisions of Section 11.2. If no successor General Partner is elected, the Partnership will be dissolved and liquidated as provided in Article XIII.

Dissolution of Partnership

The Partnership will not be dissolved by the admission of Substituted General Partners or Additional General Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the removal or withdrawal of the General Partner any successor General Partner will continue the business of the Partnership. The Partnership will dissolve and, subject to Section 13.2, its affairs will wind up, upon:

- (a) the expiration of its term as provided in Section 1.5;
- (b) an Event of Withdrawal of the General Partner as provided in Section 12.1(a) (other than Section 12.1(a)(ii)), unless a successor is elected and an Opinion of Counsel is received as provided in Section 12.1(b)(i) and such successor is admitted to the Partnership pursuant to Section 11.2;
- (c) an election to dissolve the Partnership by the General Partner that is approved by General Partners then owning of record Units representing not less than [percentage of votes required to authorize liquidation]% of the Partnership Interests;

Corporate Bylaws

Principal Executive Office. The Board of Directors shall designate the location of the principal executive office of the Corporation at any place within or without the State of California. If the principal executive office is outside the State of California, then the Board of Directors shall designate the location of the principal business office in the State of California.

Annual Meeting

The annual meeting of shareholders shall be held at 10:00 a.m. on [Annual Date] _____, in each year, if not a legal holiday, and if a legal holiday, on the next business day following. The first annual meeting of shareholders shall be held on _____. In the event the annual meeting of shareholders shall not be held on this date, the Board of Directors shall cause a meeting in lieu thereof to be held as soon as convenient, and any business transacted or election held at that meeting shall be as valid as if the business were transacted or election held at the date and time specified above.

At the annual meeting, directors shall be elected, reports of the affairs of the Corporation shall be considered, and any other business properly within the power of the shareholders may be transacted.

Special Meetings of Shareholders

A special meeting of the shareholders may be called by the Board of Directors, the Board Chair, the President, or by one or more holders of shares entitled to cast ten percent (10%) or more of the votes at that meeting.

Quorum of Shareholders

Except as otherwise provided in the Articles of Incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders.

The shareholders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

In the absence of a quorum, any meeting of shareholders may be adjourned from time to time by the vote of a majority of the shares represented either in person or by proxy, but no other business may be transacted, except as provided in the preceding paragraph.

Directors' Powers and Duties

Subject to the provisions of the Code and any limitations in the Articles of Incorporation and these Bylaws relating to action required to be approved by the shareholders or by the outstanding shares, the business and affairs of the Corporation shall be managed by, and all corporate powers shall be exercised by or under, the direction of the Board of Directors. The Board of Directors may delegate the management of the day-to-day operation of the business of the Corporation to a management company or other person provided that the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

A director shall perform the duties of a director, including duties as a member of any committee of the Board of Directors upon which the director may serve, in good faith, in a manner the director believes to be in the best interests of the Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Appointment of Committees

The Board of Directors may, by resolution adopted by a majority of the authorized number of directors, designate one or more committees, each consisting of two (2) or more directors, to serve at the pleasure of the Board of Directors. The Board of Directors may designate one (1) or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. The appointment of members or alternate members of a committee requires the vote of a majority of the authorized number of directors.

Designation of Officers; Removal and Resignation

The officers of the Corporation shall consist of a Chair of the Board or a President, or both, a Secretary, and a Chief Financial Officer, and each of them shall be appointed by the Board of Directors.

The Corporation may also have such other officers as may be appointed by the Board of Directors or, if authorized by the Board of Directors, by the Board Chair and President (hereafter the "Appointing Officers"), with those titles and duties as may be determined by the Board of Directors or the Appointing Officers and as may be necessary to enable the Corporation to sign instruments and share certificates.

Permissive Indemnification

The Corporation shall, to the extent and in the manner specified in the Code, have the power to indemnify each of its Agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an Agent of the Corporation.

The Corporation shall have the power to advance expenses incurred in defending any proceeding prior to the disposition of the proceeding upon receipt of an undertaking by or on behalf of the Agent to repay that amount if it shall be determined ultimately that the person is not entitled to indemnification, as provided in Section 317(f) of the Code.

Right to Income Statements

A shareholder or shareholders holding at least five percent (5%) of the outstanding shares of any class of the Corporation may make a written request to the Corporation for (i) an income statement of the Corporation for the three-month, six-month, or nine-month period of the current fiscal year ended more than thirty (30) days prior to the date of the request; (ii) a balance sheet of the Corporation as of the end of the period; and (iii) if no annual report for the last fiscal year has been sent to shareholders, the statements referred to in the first paragraph of this Section 8.1 for the last fiscal year.

The statements shall be delivered or mailed to the person making the request within thirty (30) days. A copy of the statements shall be kept on file in the principal executive office of the Corporation for twelve (12) months, and it shall be exhibited at all reasonable times to any shareholder demanding an examination of the statements or a copy shall be mailed to the shareholder.

Commercial Lease (Triple Net)

RENTAL: During the term hereof, LESSEE shall pay to LESSOR the sum of

_____ Dollars
(\$ _____) per month on the first day of each month commencing _____ and on the first day of each month thereafter, subject to adjustment as hereinafter specified in Paragraph 4, during the full term hereof;

said sum shall be referred to as the "base rental", and which sum, the parties acknowledge, is intended to be a net return to the LESSOR. Minimum monthly rental for any partial month shall be prorated at the rate of one-thirtieth (1/30th) of the minimum rent per day.

Rent plus Adjustments

RENTAL ADJUSTMENTS: The annual base rent provided for in Paragraph 3 of this Lease shall be subject to adjustment at the commencement of the second year of the term and each year thereafter ("the adjustment dates") as follows:

The base for computing the adjustment is the Consumer Price Index (All Items) for the Urban Consumers/San Francisco-Oakland California Metropolitan Area (New Series) Published by the United States Department of Labor, Bureau of Labor Statistics ("Index") for the month of the commencement of the term ("Beginning Index").

Security Deposit

DEPOSIT: On execution of this Lease, LESSEE shall pay _____ Dollars (\$ _____) to LESSOR. Of that sum, _____ Dollars (\$ _____) shall be the "base rental" for the first full monthly rent due for the first month of the term. The balance [or the sum of

_____ Dollars (\$ _____)] shall be a security deposit for the performance by LESSEE of the provisions of this Lease. If LESSEE is in default, LESSOR may use the security deposit, or any portion of it,

to cure the default and/or to compensate LESSOR for all damage sustained by LESSOR resulting from LESSEE'S default. LESSEE shall immediately, on demand, pay to LESSOR a sum equal to the portion of the security deposit expended or applied by LESSOR as provided in this Paragraph so as to maintain the security deposit in the sum originally deposited with LESSOR. If LESSEE is not in default at the expiration or termination of this Lease, LESSOR shall return to LESSEE the security deposit. LESSOR'S obligations with respect to the security deposit are not those of a trustee.

Obligation to Pay

LESSEE shall pay, before delinquency, all real property taxes and general assessments levied and assessed against the premises. LESSEE acknowledges that the taxes levied against the premises shall include consideration for the demised premises' share of its undivided portion of the common area of the condominium complex of which the demised premises form a part. Said taxes shall be prorated at the commencement and termination of the lease term for the period of LESSEE'S occupancy during the said tax years.

LESSEE shall pay before delinquency all taxes, assessments, license fees, and other charges that are levied and assessed against LESSEE'S personal property installed or located in or on the premises, and that become payable during the term, on demand by LESSOR with satisfactory evidence of these payment.

COMMON AREA CHARGES

The parties acknowledge that the demised premises is a (part of) condominium and LESSOR does give to LESSEE and its authorized representatives and invitees the non-exclusive right to use the common areas, with others who are entitled to use the common areas, subject to duly enacted and promulgated rules, regulations, articles and by-laws of the owners' association, and/or covenants, conditions and restrictions applying to the Property.

LESSEE agrees to pay, in addition to any other rental payments required hereunder, any and all charges levied or assessed by the owners' association, or any other duly constituted authority, having control of the common areas of Property, against the demised unit. Any of said assessments shall be prorated in the years of the commencement and termination of the lease term for the period of LESSEE'S occupancy during said years.

Alterations, Utilities

ALTERATIONS: LESSEE shall not make any alterations without LESSOR'S written consent. If LESSEE receives the written consent of LESSOR to install any improvements, then, in that event, said alterations shall not be commenced until three (3) days after LESSOR has received notice from LESSEE stating the date the installation of the alterations is to commence in order to allow LESSOR to post and record appropriate notice of non-responsibility. LESSOR'S consent shall not relieve LESSEE from compliance with any and all Association or Condominium requirements.

UTILITIES: Where practical, LESSEE shall be separately metered and/or charged for its utilities and services. In those instances where a utility or service is shared with others, LESSOR shall charge and assess (as billed to LESSOR) to LESSEE its proportionate charge for said utility or service, and shall upon request of LESSEE, evidence to LESSEE the basis and method of such pro-rating. LESSOR, in either event, shall not be considered a guarantor of the furnishing of said utilities and/or service.

Lessee Insurance

LESSEE, at its cost, shall maintain public liability and property damage with liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. LESSEE shall be relieved of this liability to the extent that said liability insurance may be carried by the owners' association for the benefit of LESSOR. It shall be LESSEE'S responsibility to determine whether its obligation hereunder is satisfied by any other insurance covered by the owners' association, and the risk of reliance thereon shall be upon LESSEE.

LESSEE shall obtain, and does assume, the responsibility for insuring the demised premises for fire and general comprehensive insurance in an amount sufficient to replace the demised premises. LESSEE shall not be required to duplicate any coverage carried by the Owners' association and paid for by LESSEE.

Termination of Lessee Possession

LESSOR can terminate LESSEE'S right to possession of the premises at any time. No act by LESSOR other than giving notice to LESSEE shall terminate this Lease. Acts of maintenance, efforts to relet; the premises or the appointment of a receiver on LESSOR'S initiative to protect LESSOR'S interest under this Lease shall not constitute a termination of LESSEE'S right to possession. On termination, LESSOR has the right to recover from LESSEE:

(l) The worth at the time of the award of the unpaid rent that has been earned at the time of the termination of this Lease;

Damages to Lessor

(2) The worth, at the time of the award, of the amount by which the unpaid rent would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that LESSEE proves could have been reasonably avoided;

(3) The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of the rent that LESSEE proves could have been reasonably avoided; and,

(4) Any other amount and court costs necessary to compensate LESSOR for all detriment proximately caused by LESSEE'S default.

Errors and Omissions Insurance Policy

WHAT TO DO IN CASE OF A CLAIM

In the event you directly become involved in any situation which you believe may result in a Claim, you should immediately report the details to Insurance Company.

Telephone: (999) 555-5555

Mailing Address: Insurance Company 1111 Main
Street, Newark, CA Attn: Claims Administrator

All Claims must be reported in writing. TELEPHONE
NOTICE IS NOT SUFFICIENT TO CONSTITUTE NOTICE
UNDER THE POLICY.

Claims Made Policy; Effect, Coverage

This is a "Claims-Made" policy. The coverage afforded by this policy is limited to Claims arising from the performance of Professional Services which are first made against the Insured and reported in writing to the Company while the policy is in force. Please review the policy carefully and discuss the coverage thereunder with your insurance agent, broker or other representative.

This policy excludes prior acts. Unless otherwise provided in an endorsement attached to this policy, this policy provides no coverage or defense for acts, errors, omissions or personal eludes which our prior to the effective date of the first policy issued to the Named Insured or any predecessor thereof by the Company and continuously renewed thereafter.

Claim Defined

Whenever used in this policy the term 1.1 "Claim" means:

a demand including service of suit or institution of arbitration proceedings, for money against an Insured. A Multiple Claim shall constitute one Claim for purposes of this policy.

1.2 "Claim Expenses" means:

(a) Except as provided in Section 1.2 (b) below.

(i) fees charged by any Lawyer designated by the Company;

(ii) all other fees, costs and expenses incurred by the Company resulting from the investigation, adjustment, defense and appeal of a Claim;

(iii) reasonable fees, at hourly rates and in the aggregate per comparable Claim not to exceed those customarily charged by the panel of defense counsel designated by the Company, charged by any Lawyer designated by the Insured with the prior written consent of the Company.

Damages

1.4 "Damages" means:

a monetary judgment, award or settlement but does not include:

- (a) any fine, sanction, penalty, or punitive or exemplary damages;
- (b) claim expenses including, but not limited to, legal fees, costs or expenses in connection with a monetary judgment, award or settlement; or
- (c) restitution of legal fees previously paid to any Insured.

Named Insured

(a) the Named Insured, defined as the partnership, professional corporation or individual named in item 1 of the Declarations;

(b) any Lawyer who is a partner of, stockholder in, or employee of the Named Insured at the effective date of this policy, for so long as such Lawyer remains a partner of, stockholder in, or employee of the Named Insured and solely with respect to acts on behalf of the Named insured or Predecessor Firm. The individuals listed in Item 2 of the Declarations will be conclusively presumed to constitute all such individuals at the effective date of this policy.

Limit of Liability

"Limit of Liability — Each Claim" means:

the limit of liability for each Claim as set forth in Section 4.1 of this policy.

1.12 "Limit of Liability — Policy Aggregate" means:

-the limit of liability for all Claims under the policy as set forth in Section 4.2 of this policy. 1.13 "Multiple Claim" means:

two or more demands received by the Insured for money, including service of suit or institution of arbitration proceedings against the Insured, arising out of a single act, error or omission or Personal Injury or a series of related acts, errors, omissions or Personal Injuries, whether such demands are made against one or more Insureds or whether such demands are made by one or more persons or organizations. Without limitation on the foregoing, a shareholder derivative or class action suit brought against the insured for acts, errors, omissions or Personal Injuries or a related series of acts, errors, omissions or Personal Injuries shall constitute a Multiple Claim.

Covered Claims

Coverage for Professional Liability.

Subject to the terms and conditions of this policy, including, but not limited to Article 4 of this policy entitled "Limits of Liability" and Section 2.5 of this policy entitled "Reduction of Claim Payment", and in reliance upon the representations made in the Application attached to and made a part hereof, the Company agrees to pay on behalf of the Insured all sums in excess of the Deductible stated in the Declarations which the insured shall become legally obligated to pay as Damages as a result of CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE COMPANY DURING THE POLICY PERIOD:

Claims Defined

(a) By reason of any act, error, omission or Personal Injury arising out of Professional Services rendered or that should have been rendered by the Insured or by any person whose Professional Services were performed solely at the direction of the Insured and for whose acts, errors, omissions or Personal Injuries the Insured is legally responsible;

(b) By reason of any act, error, omission or Personal injury committed by any non-Lawyer employee of the Named Insured but solely if arising out of services rendered within the scope of such person's employment by the Named Insured and arising out of the Named Insureds Professional Services.

Effective Date of Coverage

PROVIDED THAT such act, error or omission or such Personal injury happens on or subsequent to the effective date of the first policy issued to the Named Insured or any Predecessor Firm by the Company and continuously renewed and maintained in effect to the inception of this Policy Period.

Excluded Risks

THIS POLICY DOES NOT APPLY:

3.1 To any Claim based on or arising out of any criminal act, error, omission or Personal Injury committed by an Insured or any dishonest, fraudulent or malicious acts, errors, omissions or Personal Injuries committed by an Insured with actual, dishonest or fraudulent purpose or intent or with Malice. As used herein, "Malice" means conduct which is intended by the Insured to cause injury or conduct which is carried on by the Insured with conscious disregard of the rights or safety of others.

Insured Duty to Give Notice

Notice of Claim or Suit.

As a condition precedent to the Insured's right to the protection afforded by this Insurance, the Insured shall, as soon as practicable during the Policy Period, give to the Company written notice of any Claim made against the Insured directed to Company

In the event suit is brought against the Insured, the Insured shall IMMEDIATELY forward to the Company, directed to the attention of the Company's Claims Administrator, every demand, notice, summons or other process received by him or by his representatives.

Arbitration

In the event that a dispute arises between an Insured and the Company with respect to (1) coverage; (2) liability for premiums, deductibles, or other amounts; or (3) any term or condition of the Policy, the matter shall be resolved by arbitration and such arbitration shall be governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the Code Of Civil Procedure. If a dispute subject to arbitration hereunder should arise, either party may make a demand for arbitration by filing a demand in writing with the other. There shall be three arbitrators, one named in writing by each of the parties within ten (10) days after demand for arbitration is given and a third chosen by the two appointed. Should either party refuse or neglect to join in the appointment of the arbitrator(s) or to furnish the arbitrator(s) with any papers or information demanded, the arbitrator(s) are empowered by both parties to proceed ex parte.

Policy Manual

All employees are employed on an at-will basis, meaning that an employee can resign or be terminated at any time, with or without cause. Nothing in this handbook is intended to change the status of all employees as being at-will, to require cause for resignation or termination, or to imply any continued or vested right in future employment of any employee.

Equal Opportunity

It is the policy of the Company to provide equal employment opportunity to all employees and applicants for employment and not to discriminate on any basis prohibited by law, including race, color, sex, age, religion, national origin, disability, sexual orientation, marital status or veteran status.

It is our intent and desire that equal employment opportunities will be provided in employment, recruitment, selection, compensation, benefits, promotion, demotion, layoff, termination and all other terms and conditions of employment. The President of the Company and all managerial personnel are committed to this policy and its enforcement.

Harassment

The Company will not tolerate harassment or intimidation of our employees on any basis prohibited by law, including race, color, sex, age, religion, national origin, handicap, disability, marital status, or veteran status. Moreover, any suggestions made to any employee that sexual favors will affect any term or condition of employment with the Company will not be tolerated.

It is the policy of the Company that any harassment, including acts creating a hostile work environment or any other discriminatory acts directed against our employees, will result in discipline, up to and including discharge. The Company also will not tolerate any such harassment of our employees by our clients or vendors.

Sexual Harassment Defined, Examples

For purposes of this policy, sexual harassment is defined as any type of sexually-oriented conduct, whether intentional or not, that is unwelcome and has the purpose or effect of creating a work environment that is hostile, offensive or coercive. The following are examples of conduct that, depending upon the circumstances, may constitute sexual harassment:

Unwelcome sexual jokes, language, epithets, advances or propositions;

Written or oral abuse of a sexual nature, sexually degrading or vulgar words to describe an individual;

Bonuses Discretionary

The Company may give some or all employees or independent contractors bonuses at the fiscal year-end, shortly thereafter based on available cash flow, in sums determined from year to year by the Company depending on business conditions and other factors that the Company considers appropriate.

The bonus, if any, is purely discretionary and no employee or independent contractor has a vested right to a bonus. Bonuses are not given as a matter of course, and failure to receive a bonus should not be regarded as an expression of dissatisfaction.

Exempt Employees

Exempt Employees - Certain employees such as executive, administrative, professional and outside sales employees are paid on a salary basis for all hours worked each week. Certain computer professionals may also be exempt, regardless of whether they are paid on a salary or hourly basis. These employees are expected to work whatever hours are required to accomplish their duties, even if it exceeds their normal workweek. No overtime premium pay will be paid to exempt employees in most circumstances.

Non-Exempt Employees - All employees who are not identified as exempt employees are considered non-exempt employees. Non-exempt employees are eligible for payment of overtime premium pay.

Safety Equipment, Injury Reporting

Where needed, the company provides its employees with appropriate safety equipment and devices. You are required to use the equipment provided in the manner designated as proper and safe by the manufacturer. Failure to properly use safety equipment may lead to disciplinary action, up to and including termination.

If you require safety equipment that has not been provided, contact your supervisor before performing the job duty for which you need the safety equipment.

Employees are required to report any injury, accident, or safety hazard immediately to their supervisor(s). Minor cuts or abrasions must be treated on the spot. More serious injuries or accidents will be treated accordingly. Serious injuries must be reported on the injury or accident report form available in the office.

Violence or Threats in Workplace

The company believes in maintaining a safe and healthy workplace, in part by promoting open, friendly, and supportive working relationships among all employees. Violence or threats of violence have no place in our business. Violence is not an effective solution to any problem.

Employees are strictly prohibited from bringing any weapons, including knives, pistols, rifles, stun guns, Mace, etc., to the worksite or office. Neither threats of violence nor fighting will be tolerated. Furthermore, if you have a problem that is creating stress or otherwise making you agitated, you are encouraged to discuss it with your supervisor.

Drugs in Workplace

The company does not tolerate the presence of illegal drugs or the illegal use of legal drugs in our workplace. The use, possession, distribution, or sale of controlled substances such as drugs or alcohol, or being under the influence of such controlled substances is strictly prohibited while on duty, while on the company's premises or worksites, or while operating the company's equipment or vehicles.

The use of illegal drugs as well as the illegal use of legal drugs is a threat to us all because it promotes problems with safety, customer service, productivity, and our ability to survive and prosper as a business.

External Interests in Conflict With Duty to Company

You should avoid external business, financial, or employment interests that conflict with the company's business interests or with your ability to perform your job duties. This applies to your possible relationships with any other employer, consultant, contractor, customer, or supplier.

Violations of this rule may lead to disciplinary action, up to and including termination.

Conflict of Interest

In order to avoid any appearance of a conflict of interest, employees are expected to abide by the following code of ethical conduct. Please consult your supervisor or an official of the company if you have any questions.

Employees of the company should not solicit anything of value from any person or organization with whom the company has a current or potential business relationship.

No Valuable Gifts

Employees of the company should not accept any item of value from any party in exchange for or in connection with a business transaction between the company and that other party.

Employees may accept items of incidental value (generally, no more than \$25) from customers, suppliers, or others as long as the gift is not given in response to solicitation on your part and as long as it implies no exchange for business purposes. Items may include gifts, gratuities, food, drink and entertainment.

Trade Secret, Proprietary Information

The Company considers its confidential and proprietary information, including the confidential and proprietary information of our customers, to be one of its most valuable assets. As a result, employees must carefully protect and must not disclose to any third party all confidential and proprietary information belonging to the Company or its customers. Such protected information includes, but is not limited to, the following:

Trade Secrets (cont.)

matters of a technical nature, such as computer software, product sources, product research and designs; and matters of a business nature, such as customer lists, customer contact information, associate information, on-site program and support materials, candidate and recruit lists and information, personnel information, placement information, pricing lists, training programs, contracts, sales reports, sales, financial and marketing data, systems, forms, methods, procedures, and analyses, and any other proprietary information, whether communicated orally or in documentary, computerized or other tangible form, concerning the Company's or its customers' operations and business.

Moonlighting

The company discourages our employees from taking additional outside employment.

Employees who wish to take on outside employment must first obtain permission from the company president. Work requirements for the company, including overtime, must take precedence over any outside employment.

The company will not permit any employee to take an outside job with a company in the same or related business as the company, or which is in any way a competitor of the company.

Moonlighting (cont.)

If the company permits an employee to take outside employment, the employee must report to his or her supervisor when the outside job has started. If, as a result of this moonlighting, the employee is unable to work when requested by the company, including overtime, or is unable to maintain a high work performance level at the company, permission to work at the outside job may be rescinded, or the employee may be subject to dismissal.

Work for Hire Doctrine

The Company is legally deemed the author of any works or processes created for the Company, while engaged in performing services for the Company. For such works or processes, the Employee agrees that the Company shall be deemed the legal author for all intents and purposes of any works, processes or products created by the Employee for the Company.

Employee will cooperate in executing any further assignment documents, or other documents necessary to effect this provision, and agrees to give up any copyright, trademark, patent, or other intellectual property right in works, processes or products created by Employee for Company.

Contractual Language

Carefully review or have an attorney review any critical documents such as contracts, leases, partnership agreements or related documents.

Stating you did not read a document, or were not aware of provisions of a document which you signed or agreed to is not going to relieve you of the effect of such provisions

Being aware and familiar with contractual language in documents which pertain to your business will help you to avoid unwarranted risks and liabilities.

Summary

- ▶ Risk is an essential element of conducting any form of business.
- ▶ 1. Research with whom you are working
- ▶ 2. Review contracts and other important documents
- ▶ In today's economy, taking basic precautions to reduce your risk may make the difference between your business surviving or failing

Spend The Time to Do It Right



Questions



Contact Information

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