

## Independent Contractor Agreement

This Independent Contractor Agreement ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date") by and between **ThouArt, LLC**, a Limited Liability Company organized and existing under the laws of Texas, and its Affiliates, (hereinafter "Company"), and independent contractor (insert name) \_\_\_\_\_ an (insert Individual, Sole proprietorship, Partnership, Corporation or Limited Liability Company (LLC)) \_\_\_\_\_, with its Principal Address at (insert City/State/ZIP) \_\_\_\_\_ (hereinafter "Independent Contractor").

Company and Independent Contractor are sometimes hereinafter referred to individually as a "Party" or collectively as the "Parties".

Independent Contractor Social Security or Employer Identification Number is \_\_\_\_\_ and Business Telephone is \_\_\_\_\_.

**Consideration** For good and valuable consideration acknowledged and received, Independent Contractor enters into this Agreement of Independent Contractor's own free will.

### Work to Be Performed

Company desires that the Independent Contractor perform, and the Independent Contractor agrees to perform, the following work: sales representation for advertising and imprinted goods and services, advertising specialty products, goods and services sold through or by the Advertising Specialty Institute (ASI). Company expressly reserves the right to employ other persons (including other contractors or vendors) for services similar or related to the work or those covered by this Agreement, and Independent Contractor shall reasonably coordinate its work and cooperate with Company's other contractors or vendors when so directed by Company.

### Provision of Independent Contractor Personnel

Independent Contractor represents, warrants and covenants that all of Independent Contractor Personnel are, and for the Term will be, fully trained, experienced, qualified and able to perform the Work for which they are intended. Independent Contractor shall have performed reasonable and customary background screening of all Independent Contractor Personnel involved with any Work, such screening to include without limitation appropriate identification and right to work verification, and verification of education and work experience.

### Term of Agreement

This Agreement shall commence on the Effective Date and shall continue in full force and effect through and including the satisfactory completion of the Work in Company's reasonable opinion (the "Term").

### Technical Direction

The Independent Contractor shall receive technical direction only from Jasna Abraham or her designee, as authorized in writing.

### Terms of Payment

Company shall pay the Independent Contractor according to the following terms and conditions: Independent Contractor must invoice on its letterhead with a line item for each project or class taught. Invoices must be received within sixty days of completion of the project or class taught. Company will have net thirty days from receipt of invoice to issue payment to Independent Contractor.

### Reimbursement of Expenses

Company shall not be liable to the Independent Contractor for any expenses paid or incurred by the Independent Contractor unless otherwise agreed to in writing.

### Federal, State, and Local Payroll Taxes

Company shall not withhold or pay federal, state, or local income taxes or payroll taxes of any kind on behalf of the Independent Contractor or the employees of the Independent Contractor. Company shall not treat the Independent Contractor as an employee with respect to the services performed hereunder for federal, state, or local tax purposes.

### Notice to Independent Contractor About Its Tax Duties and Liabilities

The Independent Contractor understands that they are responsible to pay, according to law, the Independent Contractor's federal and state income taxes, and that Company is not withholding or paying any portion of Independent Contractor's taxes. If the

Independent Contractor is not a corporation, the Independent Contractor further understands that the Independent Contractor may be liable for self-employment (Social Security) tax, to be paid by the Independent Contractor according to law.

#### **Responsibility for Workers' Compensation**

No workers' compensation insurance shall be obtained by Company covering the Independent Contractor or employees of the Independent Contractor. The Independent Contractor shall comply with the workers' compensation law concerning the Independent Contractor and the employees of the Independent Contractor.

#### **Termination of Agreement**

This Agreement may be terminated at any time by Company or the Independent Contractor, with or without cause, by written notice to the other party. Notice shall be deemed to have been sufficiently given either when served personally or when sent by first-class mail addressed to the parties at the addresses set forth above in this Agreement. Company shall not be liable for, nor shall the Independent Contractor be liable to perform, any services or expenses incurred after the receipt of notice of termination.

#### **Independent Contractor Status**

The Independent Contractor expressly represents and warrants to Company that (1) he or she is not and shall not be construed to be an employee of the company and that his or her status shall be that of an independent contractor solely responsible for his or her actions and inactions; (2) the Independent Contractor shall act solely as an Independent Contractor, not as an employee or agent of Company; and (3) the Independent Contractor is not authorized to enter into contracts or agreements on behalf of Company or to otherwise create obligations of Company to third parties.

#### **Assignability**

This Agreement shall not be transferred or assigned, in whole or in part, by the Independent Contractor without the prior written consent of Company.

#### **Choice of Law**

Any dispute under this Agreement, or related to this Agreement, shall be decided in accordance with the laws of the State of Texas without regard to the principles of conflict of laws thereof that would cause the laws of another jurisdiction to apply. Venue shall be Harris County, Texas.

#### **Agreement**

The Agreement cannot be changed or modified orally. This Agreement may be supplemented, amended, or revised only in writing by agreement of the parties.

#### **Confidential Matters and Proprietary Information**

The Independent Contractor recognizes that during the course of contract performance they may acquire knowledge or confidential business information or trade secrets. "Confidential Information" means any information, including data, designs, methods, formulas, processes, customers, and any other technical, financial or trade information, acquired by Independent Contractor or Independent Contractor Personnel in the performance of the Work or otherwise in connection with this Agreement. In addition, Confidential Information shall include any systems, procedures, algorithms, computer programs, data and information which Independent Contractor may construct or acquire possession or knowledge of by reason of its services rendered under this Agreement, including without limitation all confidential and proprietary information or persons, firms, companies and institutions other than Company which Company is obligated, under confidentiality or secrecy agreements, to maintain confidential.

The Independent Contractor agrees to keep all confidential information in a secure place and further agrees not to publish, communicate, divulge, use, or disclose, directly or indirectly, for his or her own benefit or for the benefit of another, either during or after contract performance, any confidential business information or trade secrets. Upon termination or expiration of this Agreement, Independent Contractor shall deliver all records, data, information, and other computer media or documents produced or acquired during the performance of this Agreement and all copies thereof to Company. Such material shall remain the property of Company.

Notwithstanding the foregoing, the term Confidential Information shall not be deemed to include any information that is (a) already known to Independent Contractor as of the date of disclosure under this Agreement; or (b) already in possession of the public or becomes available to the public other than through the fault of Independent Contractor; or (c) acquired independently and without a confidentiality restriction by Independent Contractor from a third party; or (d) developed by Independent Contractor or its Affiliates independently of the Confidential Information received from Company.

"Affiliate(s)" means, with respect to a Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" means the ability to direct or cause the direction of the management or policies of a Person through any of the following: (i) beneficial ownership of a controlling interest of the voting shares or other securities of a Person; (ii) the position as a general partner of a Person that is a partnership, including, without limitation, a limited partnership; (iii) the position as a managing member of a Person that is a limited liability company; (iv) pursuant to a written agreement; or (v) operatorship of a joint venture or joint owned or joint controlled asset(s).

#### **Limitations on Confidentiality Obligation**

Contractor may disclose the Confidential Information without Approval to its Affiliates, including their directors, officers and employees, its counsel(s) or consultant(s) and to Contractor Personnel, who have a clear need to know such information in connection with and to the extent necessary for the performance of Contractor's obligations under this Agreement; provided, however, that, prior to disclosure Contractor shall obtain a written undertaking of confidentiality, substantially in the same effect as in this Agreement. Contractor may also disclose the Confidential Information without Approval when and to the extent required by Law.

#### **Non-Solicitation – Non-Competition**

Without prior written approval of Company's management, Contractor agrees as follows:

- (a) For a period of twenty-four (24) months following the termination of this Agreement or the relationship provided hereunder, whichever comes later, Contractor will not, either directly or indirectly, call on, solicit, or induce any contractor employee or officer of Company whom Contractor had contact with, knowledge of, or association with, either directly or indirectly arising from Contractor's performance under this Agreement, to terminate his or her employment or other status with Company, and Contractor will not assist any other person or entity in such a solicitation, and
- (b) For a period of twenty-four (24) months following the termination of this Agreement or the relationship provided hereunder, Contractor will not call on, service or solicit competing business from customers of Company, or its Affiliates if, Contractor (i) had or made contact with the customer, or (ii) had access to information and/or files about the customer resulting either directly or indirectly from Contractor's performance under this Agreement, and
- (c) For a period of twenty-four (24) months following the termination of this Agreement or the relationship provided hereunder, Contractor will not compete with, or form or hold an interest in any entity that directly competes with Company, or its Affiliates.
- (d) Territorial Scope - Contractor understands that Contractor will be performing services or otherwise obtaining specialized knowledge from Company. For these reasons, Contractor agrees that they will not, either directly or indirectly, perform the acts enumerated in sections (a), (b) or (c) above in any way within Harris County, Texas or on the World Wide Web. Given the nature of the acts described in sections (a), (b) or (c) above, Contractor agrees that this provision is both reasonable and necessary to protect the confidential nature of the information.
- (e) ASI distributorship: Contractor expressly agrees that it will not apply for, join or become an Advertising Specialty Institute (ASI) distributor, and will not advertise that it holds an ASI distributor number unless authorized in writing by Company.

#### **Conflicts of Interest**

The Independent Contractor shall not act as an agent for, consultant to, or as an officer, employee, or other representative of any subcontractor or supplier to Company, or serve in any of the foregoing capacities for any of Company's competitors or prospective competitors, without giving prior written notification to Company. The Independent Contractor hereby warrants that there is no conflict of interest between the Independent Contractor's other employment, if any, or other contracts, if any, and the activities to be performed hereunder. The Independent Contractor shall advise Company if a conflict of interest arises in the future.

#### **Inventions, Patents, Trademarks**

The terms "Work," "Trademark," and "Invention" include anything created for Company by the Independent Contractor, whether alone or with others, and whether those others be independent contractors, employees, members or agents of Company. 1. The term "Work" means any and all writings, designs, models, drawings, photographs, physical property, reports, etc., that are protectable under Title 17 of the U.S. Code. 2. The term "Trademark" means any name, word, phrase, logo, design, or other graphic depiction generated during the performance of this Agreement that is or can be used to describe either a product or service of Company. 3. The term "Invention" means any designs, processes, inventions, or discoveries that may be patentable or otherwise protectable under Title 35 of the U.S. Code.

**Work Made for Hire**

During the performance of this Agreement; the Independent Contractor may create certain works for Company that may be copyrighted under the laws of the United States. To the extent that any such works are created, the Independent Contractor will be considered to have created a work made for hire as defined in 17 U.S.C. § 101, and Company shall have the sole right, title and interest to the copyright. If any work created by the Independent Contractor does not qualify as a work for hire, the Independent Contractor agrees to assign his or her right in the work to Company, as provided below.

**Title to Works, Trademarks, and Inventions Produced**

It is understood and agreed that the entire right, title, and interest throughout the world to all Works, Trademarks, and/or Inventions that are conceived of, prepared, procured, generated, or produced, whether or not reduced to practice, by the Independent Contractor, either solely or jointly with others during the course of, in connection with, or as related to the performance of this Agreement, shall be and hereby are vested and assigned by the Independent Contractor to Company.

The Independent Contractor agrees to execute any and all documents prepared by Company and to do all other lawful acts as may be required by Company to establish, document, and protect such rights.

The Independent Contractor has acquired or shall acquire from each of his or her employees, consultants, and subcontractors, if any, the necessary rights to all such Works, Trademarks, and Inventions produced by such employees, consultants, and subcontractors, within the scope of their employment by the Independent Contractor in performing services under this Agreement. The Independent Contractor shall obtain the cooperation of each such employee to secure to Company or its nominees the rights Company may acquire in accordance with the provisions of this clause.

**Reports**

The Independent Contractor, when directed, shall provide written reports with respect to the services rendered hereunder.

**Severability**

Each portion of this Agreement is intended to be severable. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, for any reason, then, insofar as is practical and feasible, the remaining portions of this Agreement shall be deemed to be in full force and effect as if such invalid provision was not contained herein.

**Relationship of the Parties**

The obligations and liabilities of the Parties are intended to be several and not joint, and nothing contained herein shall be construed to create an association, trust, partnership or joint venture between the Parties, and each Party shall be liable individually and severally for its own obligations under this Agreement.

**Survival**

Except as expressly otherwise provided in this Agreement, all covenants, indemnities, representations, warranties, acknowledgments, agreements, rights and obligations of the Parties under this Agreement which would naturally survive this agreement, shall survive and remain in full force and effect beyond, and not be affected by, the termination of this Agreement or the completion of the Work. Further, the confidentiality provisions of this Agreement shall survive for four years after termination of this Agreement.

**Miscellaneous**

Statements About Company. Contractor shall refrain, before, during, and after his or her project or other type of relationship with Company, from publishing any oral or written statements about Company, any of its respective subsidiaries or Affiliates, or any of such entities' officers, employees, agents, or representatives that are disparaging, slanderous, libelous, or defamatory, or that disclose private or confidential information about their business affairs; or that constitute an intrusion into their seclusion or private lives; or that give rise to unreasonable publicity about their private lives; or that place them in a false light before the public; or that constitute a misappropriation of their name or likeness. Independent Contractor shall not issue or cause the publication of, or make any reference to, Company or Company's Affiliates in, any press release, public announcement, advertising, circular or promotional material relating to the existence of this Agreement or the subject matter of this Agreement without the Approval of Company.

**Evidence of Insurance**

Independent Contractor shall obtain and maintain throughout the Term, at a minimum the following insurance coverage's with at least the minimum limits set forth below, and naming Company as additional insured. The certificates shall provide that such policy will not be subject to substantial change or cancellation, except upon prior written notice to Company to be given at least thirty (30) days in advance.

1. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial General Liability insurance, including Independent Contractor's contractual liability and Independent Contractor's protective liability insuring the indemnity agreements set forth in the Agreement, with limits not less than U.S. \$1,000,000, per occurrence, combined single limit, applicable to bodily injury, sickness or death and for loss of or damage to property of third parties.

2. **WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE** Employer's Liability insurance, including coverage for occupational disease, and Workers' Compensation insurance, or similar statutory social insurance, as required by Applicable Laws. The Employer's Liability policy shall provide an indemnity of at least U.S. \$1,000,000 for any one occurrence.

3. **AUTOMOBILE LIABILITY INSURANCE.** Automobile Liability Insurance covering owned, non-owned and hired vehicles with a limit of not less than U.S. \$1,000,000, per occurrence, combined single limit applicable to bodily injury, sickness or death and loss of or damage to property of third parties.

4. **PROFESSIONAL LIABILITY INSURANCE** Professional Liability Insurance coverage for errors and omissions of Independent Contractor with limits of at least U.S. \$1,000,000 per claim and aggregate coverage commencing on the earlier of the Effective Date of the Agreement or commencement of the Work.

**INDEMNITY**

Independent Contractor agrees to fully release, indemnify and defend Company and its members, officers, directors, employees, owners, heirs, assigns, and Affiliates from and against, and hold each of them harmless from, all liability, claims and losses, resulting from, relating to or arising in connection with performance under this Agreement.

**Entire Agreement.**

This constitutes the entire agreement between the Parties, and any modification or amendment of this Agreement must be in writing and signed by and authorized member of Company.

**Security Regulations**

The Independent Contractor shall comply with all applicable safety and security regulations of Company.

IN WITNESS **WHEREOF**, this Agreement has been executed by duly authorized representatives of the Parties,  
effective as of the Effective Date.

INDEPENDENT CONTRACTOR

Print name \_\_\_\_\_

Title (if applicable) \_\_\_\_\_

Signature \_\_\_\_\_