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The following is an example of The California Commission Agreement for Independent Contractor with Indemnity Provision; created by Eugene Kinsey of The Kinsey Law Offices, 323 Main Street, 2nd Floor, Seal Beach, California, 90740; that is publically available on the internet at <http://www.kinseylaw.com/freestuff/EMPLOYMENT/calcommissionindependentcontractorindemnity.html>. It is provided here as a sample for your review and as an educational tool. (Use at your own risk):

COMMISSION AGREEMENT WITH  
INDEMNITY PROVISION

This Commission Agreement with Indemnity Provision ("Agreement") is between \_\_\_\_\_ ("Company") and \_\_\_\_\_ ("Agent").

In consideration of the mutual agreements and covenants herein contained, the parties hereto agree as follows:

1. AGENCY: The Company appoints the Agent as its \_\_\_\_\_ exclusive agent or \_\_\_\_\_ non-exclusive agent for the following purposes:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. INDEPENDENT CONTRACTOR: This Agreement shall not render the Agent an employee, partner, or joint venturer with the Company for any purpose. The Agent is and will remain an independent contractor in his or her relationship to the Company. The Company shall not be responsible for withholding taxes with respect to the Agent's compensation hereunder. The Agent shall have no claim against the Company hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

3. DUTIES: The following duties shall be required of Agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Agent shall lack authority to bind Company to any agreement or contract until Agent obtains written consent from \_\_\_\_\_ [Name of Individual] of the Company.

4. INSURANCE: The Agent will carry liability insurance (including malpractice insurance, if warranted) relative to any service that he or she performs for the Company.

5. COMMISSION: For the Agent's services, the Company shall pay the Agent the following commission percentage: \_\_\_\_\_ % of the Agent's total sales.

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[Provide additional details if necessary.]

6. EXPENSES: \_\_\_\_\_ Not applicable or \_\_\_\_\_ As part of the compensation to the Agent, the Agent shall also be reimbursed for the following expenses:

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[Describe all expenses for which the Agent may be reimbursed.]

The Company shall not be obligated to reimburse the Agent for any additional expenses incurred in the performance of services pursuant to this Agreement unless agreed in writing by the Company in advance.

7. TERM: Unless renewed, this Agreement expires at midnight on \_\_\_\_\_ [date].

8. RENEWAL: \_\_\_\_\_ Not applicable or \_\_\_\_\_ This Agreement shall automatically renew for increments of \_\_\_\_\_ days or \_\_\_\_\_ one month or \_\_\_\_\_ one year, unless either party gives \_\_\_\_\_ days written notice to the other party of his or her intent not to renew. Notice shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to the Company to:

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[Typed or Printed Name of Company Representative]

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[Company Representative's Address]

If to the Agent to:

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[Typed or Printed Name of Agent]

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[Agent's Address]

The parties shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

9. EXCLUSIONS: \_\_\_\_\_ Not applicable or \_\_\_\_\_ Excluded from this Agreement are all existing written agreements in place at the time of the execution of this Agreement with other agents.

10. INDEMNIFICATION: In fulfilling Agent's duties pursuant to this Agreement, the Agent agrees to indemnify and to hold harmless the Company, its affiliates, and their respective officers, directors, agents and employees, against any and all losses, claims, damages and expenses, including reasonable and necessary attorney's fees, to the extent any such losses, claims, damages and expenses are due to the acts or omissions of the Agent, its officers, directors, agents and employees. The Agent, in its sole discretion, shall select counsel to defend any action pursuant to this indemnity. The Company hereby covenants not to settle or compromise any claim or cause of action for which indemnification is sought from Agent without the written permission of Agent. The obligation of Agent to so indemnify the Company is expressly contingent upon the Company's notifying the Agent, in writing, within seven (7) calendar days after Company knows, or reasonably should have known, of any claim, complaint, potential cause of action or proceeding. Failure by the Company to timely notify Agent shall relieve Agent of its obligation to so indemnify the Company to the extent any such delay materially prejudices the substantive rights and defenses available to Agent, or otherwise increases the damages, settlement costs, or costs of defense. Agent shall have no obligation to indemnify the Company should any such losses, claims, damages and expenses result, in whole or in part, from acts, omissions, willful misconduct or gross negligence of the Company, its affiliates, officers, directors, agents and employees. This indemnity obligation shall terminate four (4) years following the expiration of this Agreement. The Agent shall require any third party that enters into an agreement with the Agent (for the purposes of Agent's fulfilling its duties pursuant to this Agreement) to execute the Indemnity Agreement attached hereto as Exhibit A.

11. MODIFICATION: This Agreement may not be modified except by amendment reduced to writing and signed by both Company and Agent. No waiver of this Agreement shall be construed as a continuing waiver or consent to any subsequent breach thereof.

12. ENTIRE AGREEMENT: This Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter herein and supersedes all prior discussions between the parties. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the party to be charged. Any subsequent change or changes in the Agent's duties or commission will not affect the validity or scope of this Agreement.

13. GOVERNING LAW; CONSENT TO PERSONAL JURISDICTION: THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD FOR CONFLICTS OF LAWS PRINCIPLES. AGENT HEREBY EXPRESSLY CONSENTS TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF CALIFORNIA FOR ANY LAWSUIT FILED THERE AGAINST THE AGENT BY THE COMPANY ARISING FROM OR RELATING TO THIS AGREEMENT.

14. SEVERABILITY: If one or more of the provisions in this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.

15. HEADINGS: Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.

16. ATTORNEY FEES: In the event that this Agreement becomes subject to litigation between the parties hereto, the parties agree that the prevailing party shall be entitled to an award of attorney's fees, costs, and the prevailing statutory interest from the other party.

17. ADDITIONAL ACKNOWLEDGMENTS: Both parties acknowledge and agree that: (a) the parties are executing this Agreement voluntarily and without any duress or undue influence; (b) the parties have carefully read this Agreement and have asked any questions needed to understand the terms, consequences, and binding effect of this Agreement and fully understand them; and (c) the parties have sought the advice of an attorney of their respective choice if so desired prior to signing this Agreement.

18. FURTHER DOCUMENT: If any other provisions or agreements are necessary to enforce the intent of this document, both parties agree to execute such provisions or agreements upon request.

This Agreement, consisting of \_\_\_\_\_ pages, including this page, is entered into this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Company:

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[Signature of Company Representative]

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[Typed or Printed Name of Company Representative]

Agent:

\_\_\_\_\_  
[Signature of Agent]

\_\_\_\_\_  
[Typed or Printed Name of Agent]

ACKNOWLEDGMENT

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

PERSONALLY came and appeared before me, the undersigned authority, on this day appeared \_\_\_\_\_ [Name of Company Representative] and \_\_\_\_\_ [Name of Agent], known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the instrument for the purposes and consideration expressed in the instrument.

GIVEN under my hand and seal of office on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

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(Exhibit A)  
INDEMNITY AGREEMENT

RECITATION:

COMPANY: \_\_\_\_\_

AGENT: \_\_\_\_\_ and  
its employees, agents, and/or business invitees.

SUB-AGENT: \_\_\_\_\_

The Sub-Agent hereby agrees that in all matters relating to [describe the service/product that the Sub-Agent will provide to the Agent, or reference the separate agreement/contract, if any, between the Sub-Agent and the Agent:]

