

INDEPENDENT CONTRACTOR AGREEMENT

Updated 06/25/12

This Independent Contractor Agreement (the "Agreement") is entered into as of the date of the Purchase Order, (the "**Effective Date**") by and between the company listed therein (hereinafter, "Independent Contractor") and Beers Enterprises, Incorporated, a Delaware corporation with its principal office located at 683 Main Street, Ste. A-2, Osterville, Massachusetts 02655 ("BEI"). Independent Contractor and BEI are also referred to as "Party" and collectively as "Parties."

In consideration of the mutual promises contained herein, Independent Contractor and BEI hereby agree as follows:

1. **Services and Compensation:** BEI engages Independent Contractor to render the services (collectively, the "Service" or "Services") specified in the Purchase Order and any Proposal and/or Quote attached thereto or referenced therein.

2. **Term and Termination:** This Agreement shall commence on the date on the Purchase Order or any Proposal or Quote attached thereto or referenced therein, whichever is applicable, and shall continue until the Independent Contractor satisfactorily completes performance of the Services (hereinafter the "Term"). This Agreement may be terminated either (i) by BEI immediately at any time during the Term for any reason or no reason, or (ii) by Independent Contractor upon fifteen (15) days prior written notice if BEI is in default of any obligation hereunder and such default has not been cured within thirty (30) days of receipt of said notice. Upon termination, BEI shall only be responsible for services rendered prior to termination.

3. **Independent Contractor Relationship:**

Independent Contractor agrees to perform the Services solely as an Independent Contractor. The Parties hereunder recognize that this Agreement does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the Parties. Independent Contractor understands that while performing these Services Independent Contractor is not an employee of BEI and will not receive any training from BEI or be subject to the control or direction of BEI as to the details and means for accomplishing the Services. Independent Contractor is not authorized to enter into or commit BEI to any agreements and Independent Contractor shall not represent itself as the agent or legal representative of BEI. Further, Independent Contractor shall not be entitled to participate in any of BEI's benefits including, without limitation, any health or retirement plans.

4. **Ownership:** To the extent any inventions, technologies, reports, memoranda, studies, writings, articles, plans, designs, specifications, exhibits, software, code, or other materials prepared by Independent Contractor in the performance of Services include material subject to copyright protection, such materials have been specially commissioned by BEI and they shall be deemed "work for hire" as such term is defined under U.S. copyright law. To the extent any such materials do not qualify as "work for hire" under applicable law, and to the extent they include material subject to copyright, patent, trade secret, or other proprietary rights protection, Independent Contractor hereby irrevocably and exclusively assigns to BEI, its successors, and assigns, all right, title, and interest in and to all such materials. To the extent any of Independent Contractor's rights in the same are not subject to assignment hereunder, Independent Contractor hereby irrevocably and unconditionally waives all enforcement of such rights. Independent Contractor shall execute and deliver such instruments and take such other actions as may be required to carry out and confirm the assignments contemplated by this paragraph and the remainder of this Agreement. All documents, magnetically or optically encoded media, and other tangible materials created by Independent Contractor as part of its Services shall be owned by BEI.

5. **Taxes and Expenses:** Independent Contractor shall assume all expenses incurred in connection with the performance of Services other than those specified in the Purchase Order or any Proposal or Quote attached thereto or referenced therein, whichever is applicable, or otherwise agreed to in writing. BEI shall not be liable for Worker's Compensation, unemployment insurance, employers' liability, employer's FICA, social security, withholding tax or any other taxes or withholding for or on behalf of Independent Contractor or any other person consulted or employed by Independent Contractor in performing Services.

6. **Indemnification:** Independent Contractor shall indemnify, defend and hold BEI, its Board, officers, agents and employees harmless from any and all claims, damages, losses, causes of action and demands, including reasonable attorneys' fees and costs, incurred in connection with or in any manner arising out of Independent Contractor's performance of the Services.

7. **Warranties:** Independent Contractor represents and warrants that the Services shall be performed in accordance with the specifications established by BEI and shall not violate applicable laws, rules or regulations and standards prevailing in the industry and that Independent Contractor shall obtain all permits or permissions required to comply with such laws, rules or regulations. Independent Contractor further represents and warrants that the Services and any material supplied or obtained in connection with this Agreement will not, in any way or manner, infringe or violate any third party proprietary rights including, but not limited to, any copyright, patent, trademark, trade name, registered design, trade secret, proprietary information, contractual, property, employment or non-disclosure rights.

8. **Confidentiality:**

8.1 **Confidential Information:** Independent Contractor shall retain in confidence any information obtained under or in connection with this Agreement belonging to BEI ("Confidential Information") including, but not limited to, the existence of this Agreement and its terms. The Parties agree that the Confidential Information constitutes trade secrets and that the disclosure thereof in contravention of this Agreement would constitute an unfair trade practice. Independent Contractor shall take effective precautions reasonably calculated to prevent unauthorized disclosure or misuse of Confidential Information by any of its employees or by any other person having access to such information.

Confidential Information shall not be deemed to include information, which is:

- a. already known to the Independent Contractor;
- b. publicly known (or becomes publicly known) without the fault or negligence of the Independent Contractor;
- c. received by the Independent Contractor from a third party without restriction and without breach of this Agreement;
- d. approved for release by written authorization of BEI; or
- e. required to be disclosed by law; provided, however, that in the event of proposed disclosure pursuant to this section, Independent Contractor shall give BEI written notice before such disclosure is made.

The obligations set forth in Section 8.1 shall survive the expiry or any termination of this Agreement.

8.2 **Delivery of Document:** All documents, manuals and other written information, that constitute Confidential Information given to or purchased by Independent Contractor during the term of this Agreement, shall remain the sole and exclusive property of BEI. Within ten (10) business days after termination of this Agreement, Independent Contractor agrees that it must return to BEI any and all Proprietary Information obtained in connection with this Agreement.

8.3 **Disclosure of Terms of Agreement:**

Independent Contractor shall not disclose the existence or the terms and conditions of this Agreement to any person or entity without the prior written consent of BEI unless said disclosure is needed to facilitate performance of Independent Contractor's obligations under this Agreement.

8.4 **Specific Performance:** BEI and Independent Contractor stipulate that any breach of the provisions of this Section 8 could result in irreparable harm in an amount not readily ascertainable and that, therefore, legal remedies would be inadequate with regard thereto. Accordingly, either Party hereto shall have the right to enforce the provisions of this Section 8 by obtaining an injunction or specific performance from any court of competent jurisdiction.

9. **Notice:** All notices to this Agreement shall be in writing and shall be sent via email, facsimile or overnight delivery to the addresses or numbers provided herein. Notice shall be deemed received on the date of transmission if by email, the date of facsimile confirmation if sent by facsimile or, if sent by overnight delivery, on the date after it is so sent.

10. **Integration:** This Agreement together with any Purchase Order or any Proposal or Quote attached thereto or referenced therein, whichever is applicable, represents the entire agreement and understanding between Independent Contractor and BEI as to the subject matter hereof, superseding any prior oral or written communication relative to such subject matter. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the Parties against such enforcement of such waiver, alteration or modification is sought. If any portion of this Agreement is found to be null and void, the remainder of the Agreement shall be unaffected.

11. **Execution:** This Agreement may be executed in counterparts and duplicate originals and each of such counterparts shall, for all purposes, be deemed to be an original but altogether only one (1) Agreement. The Parties agree that this Agreement, to the extent signed and delivered by means of facsimile or email, shall be considered to have the same binding legal effect as if it were the original signed version delivered in person.

12. **Authority to Contract:** Each Party hereto warrants that it has full authority to enter into this Agreement and that such action has been duly authorized in accordance with such Party's Articles of Incorporation, By-Laws or other applicable organizational documents and procedures. Each party further warrants that the execution, delivery and performance of this Agreement will neither conflict with, result in breach of, or cause a default under any material agreement or instrument to which it is a party, nor will it conflict with or violate any statute, law, rule, regulation, order, decree or judgment of any court or governmental authority which is binding upon it.

The individuals executing this Agreement further warrant that they have the full power and authority to bind their respective entities to the term hereof and have been duly authorized to do so in accordance with such entities' corporate or other organizational documents and procedures.

13. **Applicable Law, Choice of Law Forum:** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to that state's laws concerning conflicts of laws. The Parties hereby stipulate to venue in Massachusetts, unless otherwise mutually agreed by the Parties.

14. **Captions; Sections:** Captions contained herein are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of any provisions hereof. Use of the term "Section" shall include the entire subject Section and all its subsections where the context requires.

15. **Negotiated Agreement:** The Parties hereby mutually agree and stipulate that this Agreement is the result of negotiations between the Parties and terms hereof are negotiated terms. Accordingly, any rules of interpretation, construction or resulting ambiguity against the drafter that otherwise might apply, shall not apply hereto.

16. **Waiver:**
Notwithstanding anything to the contrary, in no event shall any delay or failure on the part of either Party to exercise or enforce its rights operate as a waiver of any subsequent breach.

17. **Assignment:**
Neither Party will assign or transfer the Agreement or any of its rights or obligations herein, whether in whole or in part, without the prior written consent of the other Party.