

## INDEPENDENT CONTRACTOR AGREEMENT TERMS AND PROVISIONS

The following terms, provisions and mutual promises shall be considered incorporated into the separate Independent Contractor agreements entered into between The Mascot Organization LLC, hereinafter referred to as "Company", and \_\_\_\_\_, hereinafter referred to as "Independent Contractor", collectively referred to as the "Parties". By signing this document, Independent Contractor understands and acknowledges receipt of these terms and mutual promises and acknowledges that they shall be considered incorporated into any and every Independent Contractor Agreement entered into by the Parties during the 2013 year. Absent a separately executed Independent Contractor Agreement, the terms and mutual promises in this document are not legally binding.

### RECITALS

Independent Contractor is engaged in providing costume character demo services, with their principal address as noted below. Independent Contractor acknowledges & agrees that they alone are responsible for maintaining adequate insurance coverage and reporting, timely filing & paying of all Federal, State & Local taxes as required by law as well as any other legal requirements of any kind required to carry out said business and the Scope of Work to be performed as an Independent Contractor pursuant to this Agreement. Independent Contractor is or remains open to conducting similar tasks or activities for Clients other than the Company & holds themselves out to the public to be a separate business entity. Independent Contractor warrants that they are not entitled to a Worker's Compensation claim, and are legally allowed to work in the United States.

Company desires to engage and contract for the services of the Independent Contractor to perform certain tasks as set forth below. Independent Contractor desires to enter into this Agreement and perform as an Independent Contractor for the Company and is willing to do so on the terms and conditions set forth below.

### TERMS

#### **STATUS OF INDEPENDENT CONTRACTOR**

1. This Agreement does not constitute a hiring by either Party. It is the Parties intentions that Independent Contractor shall have an independent contractor status and **not be an employee** for any purposes, including, but not limited to, the application of the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Revenue and Taxation Code relating to income tax withholding at the source of income, the Workers' Compensation Insurance Code 401(k) and other benefit payments and Third Party liability claims. Independent Contractor shall retain sole and absolute discretion in the manner and means of carrying out their activities and responsibilities under this Agreement. This Agreement shall not be considered or construed to be a partnership or joint venture, and the Company shall not be liable for any obligations incurred by Independent Contractor unless specifically authorized in writing. Independent Contractor shall not act as an agent of the Company, ostensibly or otherwise, nor bind the Company in any manner, unless specifically authorized to do so in writing.

Independent contractor is a vendor, **not an employee**. As a vendor, Independent Contractor would not include Company in any list of employers such as when reporting work history or when filing for unemployment. Doing this may result in removal from consideration for future event opportunities.

This agreement is contingent on Independent Contractor submitting to periodic criminal background checks and agreeing to provide any required information necessary for this process. Company and its Clients require a high standard of ethics and conducts from all Subcontractors because of the nature of the work in that it involves interaction with Minors. Company reserves the right to terminate this agreement at its discretion at any time should a Subcontractor fail a background check or engage in any activity which is in conflict with the interests of Company or any of its Clients.

#### **PERFORMANCE OF SERVICES BY INDEPENDENT CONTRACTOR**

2. Independent Contractor agrees to perform Mascot related performance services for the Company. Independent Contractor promises to maintain the highest standards of professional conduct while performing services for Company, including arriving at any designated site 15 minutes prior to the performance time, being courteous, gracious, cheerful and helpful. If for any reason Independent Contractor is going to be late or unable to attend any event they are scheduled to attend, they agree to give Company twenty-four (24) hours prior notice. In the case of an emergency or unforeseen delay, Independent Contractor agrees to give Company notice of the emergency or unforeseen delay as soon as reasonably possible. Independent Contractor shall not engage in any lewd or illegal behavior while working for Company which includes but is not limited to sexual harassment, racist or slanderous remarks, vulgarity or any verbal or physical aggression. Independent Contractor may not consume or be under the influence of alcohol or illegal drugs while performing as an independent contractor for Company. Independent Contractor understands and agrees that any offense under this subsection may be grounds for prosecution, loss of pay and termination from future work at the discretion of Company. Independent Contractor understands that the Mascot performance services work is fairly unpredictable. Clients of the Company cancel, or change events at the last minute or can decide to reject a performer at their discretion. Therefore, Independent Contractor understands and assumes this risk and agrees that the Company can terminate their services at any time with or without cause by giving Independent Contractor notice of the termination. If Independent Contractor arrives at the event, and their services are terminated without cause, Independent Contractor shall be compensated for a minimum of 2 hours at the specified rate under this contract to cover any and all damages or expenses incurred by Independent Contractor.

In the event Independent Contractor is asked by the Client, end-Client or managing Party at an event to increase or change services being provided, Independent Contractor agrees to contact Company immediately. Independent Contractor is not authorized to make any changes or accept additional duties or time without the approval of Company and a signature from the onsite contact. Failure to follow this procedure may risk forfeiture of additional compensation.

Regardless of whether Independent Contract is in costume or out, every Independent Contractor is hired to promote our Client's brands. Personal feelings towards those brands are not to be shared while on-duty or on the event premises. By accepting an event contract, Independent Contractor agrees to represent the brand to the best of their ability. Personal statements which are non-supportive of the brand to anyone while engaged in promotion will not be tolerated, and are grounds for immediate dismissal without pay. Independent Contractor should not take an assignment if their negative feelings about a brand will interfere with their ability to maintain a positive performance from start to finish.

#### **PAYMENT BY COMPANY**

3. In the event a Client refuses to pay for services rendered due to violation of the standards & responsible practices as set forth in this agreement, Company will not be liable to pay the offending Independent Contractor for their services. Company will pay the Independent Contractor for their services on completion of work and receipt of signature by an appointed on-site event manager on the Event Contract/Invoice titled "Event Work Order." If Independent Contractor arrives late, leaves early or fails to obtain aforementioned signature this may result in a reduction or loss of pay at the full discretion of Company. The signed Event Work Order indicates completion of contracted assignment to the satisfaction of the Company's Client and is due within 72 hours of event completion. Completion of Event Work Order "EWO" process is the last step in completion of the contracted job. EWO paperwork must be received no later than 30 days or a service charge of 30% of the contract amount will be assessed monthly. Company tries, but does not guarantee payment to Independent Contractor within 6 to 10 weeks, depending on when Company is paid by its Client. Independent Contractor is responsible for the safety and

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security of their check payment. All payments will be sent to the address we have on file stated on the W-9 form the Independent Contractor has submitted. The Independent Contractor is responsible for submitting and confirming receipt of a new W-9 form should any changes occur to personal name, address, or tax filing status. Any checks less than 90 days old lost while in Independent Contractor's care and possession or due to outdated information will be subject to a \$35 check replacement fee which will be deducted from Independent Contractor's check.

### **NOTICE CONCERNING WITHHOLDING OF TAXES**

4. Independent Contractor recognizes and understands they will receive an IRS W-9 form in addition to this contract, the both of which must be completed and returned prior to payment. At the end of the tax year, Independent Contractor will be sent an IRS 1099 form, and will be required to file corporate and/or individual tax returns and to pay taxes in accordance with all provisions of applicable Federal and State law. Independent Contractor hereby promises and agrees to indemnify the Company for any damages or expenses, including attorney's fees, and legal expenses, incurred by the Company as a result of Independent Contractor's failure to make such required payments.

### **TRADE NAME AND CONFIDENTIAL INFORMATION**

5. Independent Contractor shall not use the Company or the Company's Client's name, name of its characters or products, or any other copyrighted information of the Company's Client in any manner whatsoever, except when authorized in writing by the Company's Client. Independent Contractor acknowledges that the business of Company and its Clients involves valuable, confidential and proprietary information and trade secrets of various kinds that Independent Contractor may gain access to while working as an Independent Contractor. Confidential Information means any information, data or other materials of Company or any of its Clients that is (i) proprietary or confidential to Company or its Clients, (ii) not generally known by the general public, and (iii) acquired by, disclosed to or known by Independent Contractor as a result of or through the relationship with Company. Confidential Information includes but is not limited to Client contacts, and characters and marketing information that has not been officially released by Company's Clients. Information publicly known that is generally employed in the industry, or generic information or knowledge which Independent Contractor would have learned in the course of similar employment or work elsewhere, in the trade, shall not be deemed Confidential Information.

During and after being a contractor for Company, and except to the extent required during the course of the contractual relationship, Independent Contractor will hold in strict confidence all Confidential Information of the Company and its Clients. Independent Contractor will not use, either directly or indirectly, Confidential Information of Company or its Clients without explicit written consent from Company and its Clients. Specifically without limiting the generality of the foregoing, Independent Contractor will not:

- a. Reveal Company's hourly rate information to anyone
- b. Disclose in any manner character information, description, images, or manner of construction of costume characters
- c. Reveal by any means public or private (incl. electronically such as online images, text or video) the identity of Independent Contractor or the identity of any other performer playing a costume character at an event.

In the event that Independent Contractor violates this provision, Independent Contractor shall pay Company \$2,500 as liquidated damages for any harm to the reputation or loss of business for Company as a result of the breach of this provision. Independent Contractor understands that this liquidated damages provision does not cover any claim or potential claim made by the Company's Client for damages resulting from the Independent Contractor breaching this provision. This provision shall survive the termination of this agreement.

The Independent Contractor agrees to not publicize any details of the event through social media, the internet, electronic or printed media without prior written permission from, or instruction to do so in writing by the Company. This includes any accounts written before, during and after the event has taken place. The character, names, images likenesses, and logos of the characters are considered intellectual property and are not to be used in any form of publicly available media without the consent of the intellectual property owner. This includes, but is not limited to, Facebook, Twitter, YouTube, web blogs, Live Journals, etc.

### **PERSONS HIRED BY INDEPENDENT CONTRACTOR**

6. All persons hired by Independent Contractor to assist in performing tasks and duties necessary to complete the Scope of Work shall be the employees of Independent Contractor unless specifically indicated otherwise in an agreement signed by all Parties. Independent Contractor shall retain sole and absolute responsibility for said employees & any and all of their activities pursuant to completing the Scope of Work. Company to be made aware & confirm understanding of this 1 business day prior.

### **ATTORNEY'S FEES AND COSTS**

7. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees, costs and necessary disbursements incurred both before or after judgment in addition to any other relief to which such Party may be entitled.

### **MEDIATION AND ARBITRATION**

8. Any controversy between the Parties to this Agreement involving the construction or application of any of the terms, provisions, or conditions of this Agreement, shall on written request of either Party served on the other, be submitted first to mediation and then if still unresolved to binding arbitration. Said mediation or binding arbitration shall comply with and be governed by the Ohio Arbitration Act (RC Ch. 2711) and the rules of the American Arbitration Association. The Parties shall select an impartial arbitrator whose decision shall be final and conclusive upon both Parties. The attorney fees and costs of arbitration shall be borne by the losing Party, as set forth in section 5 above, unless the Parties stipulate otherwise, or in such proportions as the arbitrator shall decide.

### **INDEMNIFICATION**

9. Independent Contractor shall defend, indemnify, hold harmless, and insure Company from any and all damages expenses or liability resulting from or arising out of, any negligence or misconduct on Independent Contractor's part, or from any breach or default of this Agreement which is caused or occasioned by the acts of Independent Contractor. Independent Contractor shall insure that its employees and affiliates take all actions necessary to comply with the terms and conditions set forth in this Agreement. Independent Contractor shall name Company as an additional insured on all related insurance policies including general liability.

### **NON-SOLICITATION / NON-COMPETE**

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10. Independent Contractor will not, during the period that they are a contractor of Company or at any time during the period of twelve (12) months hereafter (for any reason or no reason whatsoever), either directly or indirectly, solicit or attempt to solicit, interfere with, entice away from Company or adversely affect Company's relationship with any Client, Customer, Licensee, Licensor, Distributor, source of supply or Contractor of Company (whether actual or prospective). In addition, Independent Contractor will not, during the twelve (12) month period described above, authorize or knowingly condone or assist any individual or entity in taking any actions that they are prohibited from taking described above. If Independent Contractor is approached by a Client of Company to perform mascot, costume character work, or similar duties, Independent Contractor agrees to refer this request to Company. Company shall give Independent Contractors who refer Client projects to Company first priority to perform in the referred work. This provision shall survive termination of this Agreement.

**RELEASE AND ASSUMPTION OF RISK**

11. Performing as a mascot or costume character involves exposure to risks of physical injury. Independent Contractor understands and assumes the normal risk inherent in performing for the Company. Therefore, Independent Contractor agrees to hold harmless Company and its representatives, assigns, employees or any person or persons, corporation or corporations, acting under Company permission or authority, or any person, persons, corporation or corporations for whom Company might be acting including any firm or Client of Company, from and against any liability as a result of any physical harm, impairment or loss during the contractual period. This release does not include liability for physical harm resulting from intentional torts.

**RELEASE OF PHOTOGRAPHY**

12. For consideration received under this agreement, Independent Contractor grants The Mascot Organization LLC and its Clients irrevocable permission to photograph or video tape Independent Contractor when performing within the scope of employment under this Independent Contractor agreement. Independent Contractor irrevocably grants to Company and its Clients, the right to distribute, transmit, publish, copy, or otherwise exploit, either in whole or in part, either digitally or in any other medium now known or later discovered, the photographs or video taken of Independent Contractor while performing within the scope of this agreement. Independent Contractor understands and agrees that the photographs or video may be used and exploited without identifying Independent Contractor as their subject. Independent Contractor releases and discharges Company and its agents, representatives, and assignees from any claim or cause of action, now known or later discovered, for, among other things, invasion of privacy, right of publicity, and defamation arising out of the use and exploitation of the photographs, video or any other recording made of the Independent Contractor while performing within the scope of this agreement. Independent Contractor represents and warrants that he/she is over the age of eighteen years. In the event that the Independent Contractor is under the age of 18 a parent or legal guardian must sign and grant this release.

**CONTAINMENT OF ENTIRE AGREEMENT**

13. This Agreement supersedes any and all other Agreements, either oral or in writing, between the Parties hereto, except any Confidentiality, Trade Secret, Non-Compete, Non-Disclosure, Indemnification or Arbitration Agreement.

**REPRESENTATION**

14. Each Party of this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any Party hereto, or anyone acting on behalf of any Party hereto, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing, signed and dated by all Parties hereto.

**PARTIAL INVALIDITY**

15. If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

**GOVERNING LAW**

16. This Agreement shall be governed by, and construed under, the laws of the State of Ohio. Jurisdiction and venue for all purposes shall be in the County of Franklin, State of Ohio. I have received and read this Independent Contractor Agreement Terms and Provisions document. I understand its terms and understand and agree that they will be incorporated in all subsequently executed Independent Contractor Agreements between Independent Contractor and The Mascot Organization LLC during the calendar year of 2013.

**2013 Independent Contractor Rate Coding and Regulations**

In order to protect confidential salary information, the Event Work Order will use the following rate code translation. Please retain a copy of this document for financial records. The rate on the Event Work Order is the rate the Independent Contractor will be paid regardless of their responsibilities. All changes must be approved by a manager of The Mascot Organization LLC prior to the completion of the contract. Independent Contractor may not share this Confidential Information with anyone other than the managers of The Mascot Organization LLC, Independent Contractor's financial advisor and/or tax preparer. Do not share or discuss pay rates with other performers and do not share or discuss pay rates with our Clients. Do not call or contact our Clients to discuss or ask about Independent Contractor payment, paycheck amount or status. Violating this confidentiality is grounds for dismissal without pay. If you have questions contact our office 1-877-962-7268.

Hourly rates vary from Client-to-Client and event-to-event. They should not be construed as a reflection of our assessment of the quality of the individual contracted. In some cases, Clients are paying flat rates for the Day (then the code starts with a "D").

**Hourly Rate:** H. + code letters from below (is dollars & cents, last 2 digits indicate cents)

**Daily Rate:** D. + code letters from below (rounded to dollars)

G = 0    H = 1    I = 2    J = 3    K = 4    L = 5    M = 6    N = 7    O = 8    P = 9

**So then,** \$12.00 would code as **H.HLGG**,            \$12.50/hr. would code as **H.HLLG** and \$150 a day would code as **D.HLG.GG**

Independent Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

Revision Date: 1/14/13