

**INDEPENDENT CONTRACTOR'S AGREEMENT – MARKETING AND  
SALES REPRESENTATIVE**

Sole App Pty Ltd ACN 628 688 219

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## 1 Parties

1.1 *Sole App Pty Ltd ACN 628 688 219 of 2 Campbell Street Wakerley 4154 (the Company)*.

1.2 \_\_\_\_\_ of \_\_\_\_\_ (the Contractor).

## 2 Purpose of agreement

2.1 The Company is engaging the independent contractor pursuant to the terms of this Agreement on a commission-only basis for the purpose of soliciting and securing sales of the Sole App paid subscription to new users.

2.2 The Parties enter into this Agreement to record the rights and obligations of the Company and the Contractor in relation to the engagement.

## 3 Definitions

### 3.1 Definitions

In this Independent Contractor's Agreement, unless the context otherwise requires:

**Agreement** means this Independent Contractor's Agreement.

**Branding Guide** means the guide annexed and marked "Annexure A" to this Agreement.

**Business Day** means a day on which banks are open for general banking business in Queensland Australia, excluding Saturdays, Sundays and public holidays.

**Commission** means the commission only payment the Contractor is entitled to be paid upon New Active Users applying the Contractor's Sale Code, which is calculated in accordance with Clause 3.1.

**Company** means the company set out in the Parties clause.

**Confidential Information** includes commercially sensitive information or documentation pertaining to the Company or its Product, which is disclosed to the recipient at any time (either before or after the Effective Date) and relates to:

- (a) the business, assets or affairs of the Company; or
- (b) the subject matter or terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is marked in writing as "confidential" or is disclosed to the recipient or received, acquired, overheard, or learnt by the recipient in any way.

**Contracted Services** means the marketing and sale of the Product to New Active Users using (a) the Branding Guide and (b) the Contractor's Sale Code, resulting in payment of the Paid Subscription value to the Company.

**Effective Date** means the date on which this Agreement is signed by each of the Parties, as set out on the execution page.

**Free Trial Subscription** means a fixed term free trial subscription (currently a 30 day free trial) for the Company's Product.

**Intellectual Property** means any:

- (a) copyright;
- (b) registered or unregistered design, patent, trade mark rights;
- (c) trade, business, company or domain names;
- (d) know-how, inventions, processes, trade secrets, Confidential Information;
- (e) circuit layouts, databases or source codes; or
- (f) similar rights in any part of the world,

relating to the Company, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Marketing and Sales Representative** means an independent contractor who undertakes marketing of the Company's Product in accordance with the Branding Guide for the purpose of selling the Company's Paid Subscription to New Active Users in return for a Commission.

**New Active User** means a person who signs up for a Paid Subscription (or a Free Trial Subscription and later converts to a Paid Subscription) using the Contractor's Sale Code, and makes payment to the Company in accordance with the terms of their Paid Subscription.

**Paid Subscription** means the paid subscription for the Company's mobile and web application, currently valued at \$14.99 per month or \$149.99 per year.

**Party** means a party to this Agreement from time to time, and **Parties** means all of them.

**Product** means the Company's mobile and web application known as Sole.

**Sale Code** means the Contractor's unique promotional code, which is to be provided by the Contractor to New Active Users and applied upon New Active Users signing up for a Free Trial Subscription or Paid Subscription.

## 1 Appointment of Contractor

### 1.1 Appointment vetting process

- (a) Self-appointed Contractors who sign up via the Sole website must provide the Company with a copy of their current resume upon application.
- (b) The Company will review the Contractor's resume and will determine at its own discretion whether to appoint the Contractor.

### 1.2 Commencement of appointment

- (a) The Contractor's appointment will commence on the Effective Date.

## 2 Contractor requirements

### 2.1 Prerequisites

- (a) The Contractor must have its own registered Australian Business Number to be eligible to undertake the Contracted Services for the Company.

- (b) The Contractor understands and agrees that the Company will not provide the Contractor with any insurances or indemnities for their performance of the Contracted Services under this Agreement.
- (c) The Contractor must be prepared to work without training or supervision, and without the provision of any facilities or equipment by the Company.
- (d) The Contractor must be willing to work in their own time, without scheduled tasks or scheduled hours of work.

## **2.2 Ongoing rights and obligations**

- (a) The Contractor will not be an employee of the Company and will not be entitled to a minimum wage or any leave entitlements.
- (b) The Contractor must manage its own tax and superannuation.
- (c) The Contractor will have the freedom to perform services for other businesses during its term of engagement with the Company.
- (d) The Contractor must perform the Contracted Services in accordance with the terms of this Agreement, including the Branding Guide.
- (e) The Contractor must invoice the Company for the Contracted Services performed upon receiving the Company's monthly sales report (refer to clause 3.2 below).
- (f) If the Contractor fails to perform the Contracted Services or fails to secure Paid Subscriptions in accordance with this Agreement, or New Active User/s fail to pay the relevant Paid Subscription value to the Company, the Contractor will not be entitled to receive a Commission for the relevant sale/s.

## **3 Agreed Commission rate**

### **3.1 Commission only payment**

- (a) The Contractor will be entitled to receive Commission for undertaking the Contracted Services for the Company in accordance with this Agreement.
- (b) The Commission will be a percentage commission calculated based on the value of the Company's Paid Subscription (valued at \$14.99 per month or \$149.99 per year, as at the time of entering into this Agreement).
- (c) For the Contractor to be eligible to receive Commission, New Active Users must apply the Contractor's Sale Code either upon (a) signing up for a Free Trial Subscription before later converting to a Paid Subscription; or (b) purchasing a Paid Subscription.
- (d) The Contractor will not receive Commission for any users on a Free Trial Subscription that do not convert to a Paid Subscription within 6 months of the Free Trial Subscription ending.
- (e) The Contractor will be entitled to Commission for undertaking the Contracted Services pursuant to the following commission rates:

Number of sales made	Commission rate per subscription
0-99 New Active Users <i>(applicable to all users up to and including the 99<sup>th</sup> user)</i>	20% of subscription value – maximum 12 months subscription value
100 + New Active Users <i>(applicable to the 100<sup>th</sup> user and all users in excess of 100)</i>	30% of subscription value – maximum 12 months subscription value

By way of example:

- (i) The Contractor meets User A at a networking event and markets Sole App to User A. The Contractor provides their unique Sale Code to User A.
- (ii) User A initially signs up for Free Trial Subscription with Sole using the Contractor's Sale Code.
- (iii) At the end of the Free Trial Subscription, User A signs up for a Paid Subscription with Sole for 1 year valued at \$149.99.
- (iv) At the end of the first month of the Paid Subscription, the Contractor receives commission valued at 20% of the Paid Subscription, which equals \$30.00.

### 3.2 Calculation of Commission

- (a) The Company will calculate the Contractor's Commission by running a monthly report at the end of each month to determine the number (and value) of Paid Subscriptions secured by the Contractor for that period.
- (b) The Company agrees to provide a monthly report to the Contractor within a reasonable timeframe (in this case, within 7 days) from the end of each month.

### 3.3 Timing of payment of Commission

- (a) Payment of the Contractor's Commission is dependent on the Contractor sending an invoice to the Company setting out the number of both Free Trial Subscriptions and Paid Subscriptions secured for the relevant month.
- (b) The Commission will be paid to the Contractor within 7 days of the Company receiving the Contractor's invoice for the relevant month.

### 3.4 Paid Subscription period and renewals

- (a) The Contractor will only receive Commission for the original Paid Subscription value (i.e. \$14.99 per month (for the first 12 months of monthly subscriptions) or \$149.00 per year (for the first year only)) and will not receive ongoing Commission for ongoing subscription renewals.

### 3.5 Nominated bank account

- (a) Commission will be paid to the Contractor's nominated bank account, as notified to the Company in writing.

- (b) The Contractor's nominated bank account can be changed at any time by written notice to the Company.

## 4 Term of Agreement

### 4.1 Commencement

- (a) This Agreement takes effect on and from the Effective Date.

### 4.2 Termination

- (a) This Agreement will terminate:
  - (1) effective immediately, by the giving of written notice (by email), at any time, from the Contractor to the Company; or
  - (2) effective immediately, by the giving of written notice (by email), at any time, from the Company to the Contractor.
- (b) If there are any outstanding Commission payments owing to the Contractor at the time of Termination, and Termination is not the result of the Contractor causing any damage or loss (financial or otherwise) to the Company, the Company will pay the outstanding Commission to the Contractor within a reasonable timeframe from the date of Termination.

## 5 Company protections

### 5.1 Confidentiality

- (a) Subject to clause 5.1(b), the Contractor must:
  - (1) keep confidential; and
  - (2) not use or permit any unauthorised use of, all Confidential Information.
- (b) Clause 5.1(a) does not apply where:
  - (1) the information is in, or comes into, the public domain (other than by a breach of this clause 5.1 by the relevant Party);
  - (2) the relevant Party has the prior written consent of the Party that disclosed the Confidential Information;
  - (3) required by law;
  - (4) required in order to comply with this Agreement, provided that the Party disclosing the Confidential Information ensures the recipient complies with the terms of this clause 5.1;
  - (5) the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Agreement and provided that the Party disclosing the Confidential Information ensures the adviser complies with the terms of this clause 5.1.

- (c) The Contractor acknowledges and agrees that monetary damages may not be an adequate remedy for a breach of this clause 5.1. The Company is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 5.1.

## 5.2 Intellectual property

- (a) The Contractor is permitted to use the Company's Intellectual Property in the course of undertaking the Contracted Services only to the extent that the Intellectual Property forms part of the Branding Guide at Annexure A (e.g. Company logo, mascots).
- (b) The Contractor will not put to use any other Intellectual Property of the Company in the course of undertaking the Contracted Services, without first obtaining written consent from a Director of the Company.
- (c) The Company reserves the right to maintain a copy of and later put to use any marketing or sales material created by the Contractor in the course of undertaking the Contracted Services.

## 6 Dispute Resolution

### 6.1 Disputes

- (a) Notwithstanding the existence of any Dispute, the Parties must continue to perform their obligations under this Agreement.

### 6.2 Negotiation

- (a) In the event of a Dispute, the Party claiming there is a Dispute must as a first step give written notice to the other Party to the Dispute setting out the details of the Dispute and proposing a resolution (**Dispute Notice**).
- (b) Within 10 Business Days after receipt of the Dispute Notice, each relevant Party meet at least once to attempt to resolve the Dispute in good faith. All aspects of every such conference, except for the occurrence of the conference, will be privileged.

### 6.3 Mediation

- (a) If the relevant Parties are unable to resolve the Dispute within 15 Business Days after receipt of the Dispute Notice, as a second step, any Party involved in the Dispute may (by written notice to the other Parties) submit the Dispute to mediation administered by the Australian Disputes Centre (**ADC**), with such mediation to be conducted:
  - (1) in good faith;
  - (2) in Queensland; and
  - (3) in accordance with the ADC Mediation Guidelines.
- (b) The costs of mediation are to be split between the relevant Parties, provided that each Party will bear its own costs in relation to the mediation.



- (c) If the Dispute has not been settled within 20 Business Days after the appointment of a mediator, or such other period as agreed in writing between the Parties, the Dispute may then as a final option be referred by any Party involved in the Dispute (by written notice to the other Parties) to litigation.

## 7 Representations and Warranties

### 7.1 Nature

Each Party represents and warrants to each other Party:

- (a) where it is an individual, it has full legal capacity and power to enter into this Agreement, to perform its obligations under this Agreement, to carry out the transactions contemplated by this Agreement, to own its property and assets and to carry on its business;
- (b) where it is a company:
  - (1) it is a body corporate duly incorporated and validly existing under the laws of the place of its incorporation;
  - (2) it has the corporate power to enter into and perform its obligations under, and to carry out the transactions contemplated by, this Agreement; and
  - (3) it has taken all necessary corporate action to authorise the entry into and performance of, and to carry out the transactions contemplated by, this Agreement;
- (c) where it is the trustee of a trust:
  - (1) it is the sole trustee of the trust and no action has been taken to remove or replace it;
  - (2) it has the power under the trust deed to execute and perform its obligations under this Agreement;
  - (3) all necessary action has been taken to authorise the execution and performance of this Agreement under the trust deed; and
  - (4) this Agreement is executed, and all transactions relating to it are or will be entered into, as part of the due and proper administration of the trust, and the transactions are or will be for the benefit of the beneficiaries;
- (d) no Insolvency Event has occurred in respect of it;
- (e) this Agreement constitutes legal, valid and binding obligations, enforceable in accordance with its terms; and
- (f) the execution and performance by it of this Agreement and each transaction contemplated by it does not conflict with any law, order, judgment, rule or regulation applicable to it or any document binding on it.

### 7.2 Repetition

Each Party makes the representations and warranties in clause 7.1 on each day on which it is a Party.

## 8 General

### 8.1 Notices

- (a) A notice or other communication given under this Agreement must be:
- (1) in writing, in English and signed by the sender; and
  - (2) addressed and delivered to the intended recipient by hand, prepaid post or email in accordance with the notice details last notified by the recipient to the Parties.
- (b) A Party's notice details are set out below:
- (A) Sole App Pty Ltd:
- (i) Email: *admin@soleapp.com.au*
  - (ii) Address: 2 Campbell Street, Wakerley, 4154
- (B) Contractor:
- (i) Email: \_\_\_\_\_
  - (ii) Address: \_\_\_\_\_
- (c) A notice or communication is taken as having been given:
- (1) when left at a Party's current address;
  - (2) if mailed, on the day the notice is received by the receiving party at their current address;
  - (3) if sent by email to the receiving party's current email address, then on the same Business Day if received before 5pm on that day, or otherwise, then on the following Business Day.

### 8.2 Waiver

Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A waiver must be in writing.

### 8.3 Assignment

No Party may assign, transfer or otherwise deal with all or any of its rights or obligations under this Agreement without the prior written consent of the other Parties. Any purported dealing in breach of this clause is of no force or effect.

### 8.4 Costs and expenses

Each Party must pay its own costs and expenses (including legal costs) in connection with the negotiation, preparation and execution of this Agreement and any document relating to it.

### 8.5 Relationship of Parties

- (a) This Agreement is not intended to create an employment relationship, partnership, joint venture or agency relationship between the Parties.

(b) Nothing in this Agreement gives a Party authority to bind any other Party in any way.

#### **8.6 Independent legal advice**

Each Party acknowledges and agrees that it has had an opportunity to read this Agreement, it agrees to its terms and, prior to executing it, it has been provided with the opportunity to seek independent legal advice about its terms.

#### **8.7 Severance**

- (a) If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision must be read down as narrowly as necessary to allow it to be valid or enforceable.
- (b) If it is not possible to read down a provision (in whole or in part), that provision (or that part of that provision) is severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

#### **8.8 Entire agreement**

This Agreement contains the entire understanding between the Parties, and supersede all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

#### **8.9 Amendment**

This Agreement may only be amended by written document executed by all Parties.

#### **8.10 Counterparts**

This Agreement may be executed in any number of counterparts that together will form one document.

#### **8.11 Governing law and jurisdiction**

This Agreement is governed by the laws of Queensland. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the Queensland Courts and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

## Execution clause

Executed as an agreement by \_\_\_\_\_, ABN \_\_\_\_\_

in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Date

Executed as an agreement on behalf of **Sole App Pty Ltd, ACN 628 688 219** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director (PRINT)

\_\_\_\_\_  
Name of Director/Secretary (PRINT)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date