

## INDEPENDENT CONSULTANT AGREEMENT

This agreement (Agreement) is entered into on this **(Cover Date)** day of (Effective Date) by and between **Company** of **Company Address** in his/her/its capacity as an Independent Consultant, (Consultant), and **FloridaMakes, Inc.** (FloridaMakes) 800 N. Magnolia Avenue, Suite 1850, Orlando, FL 32803. FloridaMakes and the Consultant Company are hereinafter individually referred to as Party and collectively referred to as Parties. The Parties as agree as follows:

1. Independent Consultant. Consultant, his/her/its employees and/or agents will act as independent contractors for FloridaMakes in the performance of their duties under this Agreement. **The specific employee or agent assigned by Consultant to accomplish work under this agreement must be approved by FloridaMakes before beginning any work.** Nothing in this Agreement shall be interpreted or construed as creating or establishing an employment relationship between Consultant, his/her/its employees and/or agents; and FloridaMakes or any employee or agent of FloridaMakes. Consultant will be responsible for the payment of all Federal, State and local taxes arising out of or related to Consultant's work for FloridaMakes or the work of any of Consultant's employees or agents providing services as required by this Agreement. FloridaMakes is in no way responsible for any benefits for Consultant, his/her/its employees and/or agents and, as such, FloridaMakes will not provide for any unemployment or workers' compensation with respect to Consultant.

2. Duties and Responsibilities of Consultant.

a). Consultant will assist FloridaMakes with those responsibilities and duties ("Service") as described in any subsequently **attached Schedules describing Scope of Work for specific projects and deliverables as they are presented and agreed to as necessary.** Consultant shall be responsible for supporting all tasks and related duties associated with the Service and as may further be defined by FloridaMakes. Consultant will undertake any and all other related duties as directed by FloridaMakes and with regard to the effectiveness, quality, and timeliness of the Service will be accountable to FloridaMakes.

b). Reporting. The Consultant acknowledges that FloridaMakes is a publicly supported organization and that some data regarding the impact of this project must be collected by FloridaMakes to report to government sponsors. The Consultant agrees to work with FloridaMakes and the FloridaMakes client to describe the results in a "success story" format and to calculate the economic impact of the project. The Consultant in conjunction with the FloridaMakes project manager will collect pre-project and post-project information to prepare the FloridaMakes client for the NIST-sponsored impact survey, usually six to twelve months following the close of project work.

3. Compensation. FloridaMakes will pay Consultant a fee for Service as described above in Section 2 and in any subsequently attached Schedules agreed to as necessary, describing Scope of Work for specific projects and deliverables. **Fees for Service shall not exceed \$140,000 over a twelve-month period without prior approval from FloridaMakes.** To the extent FloridaMakes has arranged and contracted for the services on behalf of a FloridaMakes client, payment of Consultant is dependent upon FloridaMakes' receipt of such payments from the contracting client. Consultant will report all billable hours and expenses to the FloridaMakes' designated project

manager, with invoicing, no less than once monthly. Consultant will bill FloridaMakes monthly with net 30 terms and will submit all documentation by the 5<sup>th</sup> of each month for all time and expenses incurred during the previous calendar month, unless otherwise required in the project Schedules appended to this agreement.

4. Term. This Agreement shall commence as of the Effective Date and shall remain in effect unless terminated pursuant to Paragraph 5 below or terminated through a negative evaluation of Consultant work. A FloridaMakes Business Advisor evaluates the Consultant's work at the conclusion of the first project engagement, and at least once annually following that engagement.

5. Termination. FloridaMakes or Consultant may terminate this Agreement at any time for any reason upon not less than thirty (30) days prior written notice to the non-terminating Party. In the event of termination pursuant to this provision, FloridaMakes will have no further obligations to Consultant other than for payment for Services completed by Consultant, but not yet paid, prior to termination of the Agreement. In addition, Consultant agrees to cooperate and meet with FloridaMakes' designated individuals at such reasonable times and places as are necessary to deal with and respond to issues that are related to the Services performed by Consultant pursuant to this Agreement.

6. Confidentiality and Nondisclosure. During the term of this Agreement and thereafter, Consultant shall not, without the express prior written consent of FloridaMakes, use for himself/herself/itself or others, and shall not disclose to others, any confidential or proprietary information, as identified by FloridaMakes, except to the extent necessary to perform their duties as a consultant or advisor of FloridaMakes. It is agreed and acknowledged that the confidential and proprietary information is valuable, special and unique, and further agreed that the confidential and proprietary information is private, confidential and the sole property of FloridaMakes. Consultant shall use reasonable diligence in protecting the confidentiality of all such information, which is possessed by or made available to them. In addition, Consultant agrees that he/she will not use any confidential and proprietary information regarding FloridaMakes while performing services for others who are engaged in the same or similar business as FloridaMakes, namely, providing consulting and training services to manufacturing entities in the State of Florida.

For the purposes of this Agreement, "Confidential and Proprietary Information" shall mean any documentation, material or information whether written or oral that is of a confidential nature which relates to FloridaMakes and/or the existing or proposed business of FloridaMakes, and/or special access granted by FloridaMakes for Consultant to FloridaMakes clients and potential clients, such as through interaction at FloridaMakes sponsored or co-sponsored events. Whether such information is created by Consultant or by others, "Confidential and Proprietary Information" shall include, without limitation, the identity of, and any information pertaining to, any former or existing clients or other parties transacting business with FloridaMakes; client lists and client files; operating, administrative and training materials; operation methods and information; accounting, financial and planning techniques; marketing materials and information; internal publications and memoranda; computer software and systems; and any other service, product, equipment, financial, license, marketing or client information relating to FloridaMakes or the business of FloridaMakes that is not generally known to those outside FloridaMakes and that is not readily ascertainable by proper means outside FloridaMakes; and all documentation and other information relating to any

of the above. "Proprietary and Confidential Information" shall not include information which is generally known to those outside FloridaMakes, or that it is readily ascertainable by proper means by others outside FloridaMakes. **"Proprietary and Confidential Information" also shall not include any generic training materials or presentations developed by Consultant separately and used in "Services" delivered under this agreement.**

In signing this Agreement, Consultant understands that Consultant may be responsible for any breach of obligations under the terms of this Agreement and further agrees that money damages would not be a sufficient remedy for a breach of any obligations as defined herein. In the event of a breach, FloridaMakes shall be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies, but shall be in addition to all other remedies available at law or in equity to FloridaMakes. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that this Agreement has been breached, Consultant shall be liable and pay to FloridaMakes the reasonable legal fees incurred by FloridaMakes in connection with such litigation, including any appeal thereto.

Consultant further agrees that with respect to any proposed business opportunities, strategies and/or development plans identified in the Proprietary and Confidential Information, Consultant will not use such information in pursuit of Consultant's own business and marketing activities. Consultant agrees not to directly or indirectly solicit or accept work from FloridaMakes clients with whom Consultant has special access or for whom Consultant has Proprietary and Confidential Information gained due to Consultant's relationship with FloridaMakes, without advance written permission from FloridaMakes. Should additional training or consulting opportunities present themselves during the work covered by this agreement, Consultant will refer such opportunities to FloridaMakes. Should FloridaMakes be successful in a subsequent proposal and come to agreement with the client based on the opportunities discovered, Consultant will be eligible for a finder's fee and will be given first right of refusal to deliver the work for which Consultant is qualified. After subsequent agreement and Consultant participation in subsequent delivery of services, Consultant will receive an agreed customary delivery fee plus a 5% finder's fee based on the profit of the project. If Consultant does not participate in subsequent delivery of services, Consultant will be eligible to receive a 10% finder's fee based on the profit of the project.

This limitation to any subsequent use of the Proprietary and Confidential Information shall survive any termination of obligations under this Agreement or any future agreements between FloridaMakes and Consultant.

7. Documents and Records. All documents and records made by, compiled by, or made available to Consultant in the course of his/her/its performance under this Agreement, whether or not they contain Confidential and Propriety Information, are and shall remain the property of FloridaMakes, and shall be delivered by Consultant to FloridaMakes immediately upon the termination of this Agreement and/or at such other times as FloridaMakes may request. Any generic training materials developed per Paragraph 6. of this agreement remain the property of the Consultant.

8. Suspension and Debarment. Consultant represents that neither it nor any of its principals has been debarred, suspended or determined ineligible to participate in federal assistance awards

or contracts as defined in regulations implementing Office of Management and Budget Guidelines on Governmentwide Debarment and Suspension (Nonprocurement) in Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235). Consultant further agrees that it will notify FloridaMakes immediately if it or any of its principals is placed on the list of parties excluded from federal procurement or nonprocurement programs available at [www.sam.gov](http://www.sam.gov).

9. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. For Contracts in excess of \$150,000, Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

10. Restrictions on Lobbying. Consultant shall comply with the restrictions on lobbying set forth in [45 C.F.R. Part 93]. If the Contract exceeds \$100,000, Consultant must execute and deliver to FloridaMakes the "Certification Regarding Lobbying," which is available at the FloridaMakes Third Party provider network webpage (<https://www.floridamakes.com/who-we-are/third-party-provider-network.shtml>). In addition, Consultant shall comply with the applicable restrictions on lobbying contained in the federal appropriations act through which funds for the Contract were appropriated, [the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235), Division G, Title II].

11. Remedies & Injunctive Relief. The Parties agree that the restrictions imposed by this Agreement are reasonable. Accordingly, in the event that either Party breaches this Agreement in any way, the non-breaching Party shall be entitled to have a court of competent jurisdiction temporarily or permanently enjoin or restrain the breaching Party from any such violation or threatened violation. In addition, in the event Consultant violates any provision of this Agreement, FloridaMakes, in addition to its other rights and remedies, shall no longer be obligated to pay Consultant any amount that may otherwise be due to Consultant pursuant to the terms of any other agreement or arrangement between Consultant and FloridaMakes.

12. Insurance, Release, Indemnification. FloridaMakes may request that Consultant maintain professional and general liability insurance for themselves and any of their employees and/or agents and be responsible for maintaining in force the required coverage for such limits and under such terms and provisions as are usual and customary for the professional activities and Services contemplated. Consultant for itself and its respective successors, officers, directors, agents, and employees, hereby unconditionally and fully agrees to release, indemnify, defend and hold harmless FloridaMakes, the Florida Department of Economic Opportunity, and NIST MEP and its successors, officers, directors, agents, and employees, from and against any damages, claims, and expenses arising out of or resulting from work conducted by Consultant and its agents or employees under this Agreement.

13. Modification of this Agreement. No waiver or modification of this Agreement, in whole or in part, will be valid unless in writing and duly executed by each of the Parties. Any waiver of any term, condition or provision of this Agreement will not constitute a waiver of any other term,

condition or provision hereof, nor will a waiver of any breach of any term, condition or provision constitute a waiver of any subsequent or succeeding breach.

14. Assignment. Neither Party to this Agreement may assign its duties or obligations under this Agreement without the prior written consent of the other Party.

15. Severability. In the event that any paragraph or provision of this Agreement is held to be illegal, invalid or unenforceable by any court of competent jurisdiction, such holding will not affect the validity or enforceability of the remaining paragraphs or provisions. To the extent that any paragraph or provision is rendered unenforceable because it is overly broad, that paragraph or provision shall be limited to the extent required by applicable law and enforced as so limited.

16. Authority. Each individual signing this Agreement warrants that such execution has been duly authorized by the Party for which he or she is signing. The execution and performance of this Agreement by each Party has been duly authorized by all applicable laws and regulations and all necessary corporate action, and this Agreement constitutes the valid and enforceable obligation of each Party in accordance with its terms.

17. Governing Law. This Agreement and the performance of services hereunder will be governed by the laws of the State of Florida, United States of America.

18. Entire Agreement. This Agreement contains the complete agreement of the Parties and will supersede any and all other agreements, understandings and representations by and between the Parties hereto.

IN WITNESS WHEREOF, the Parties have caused this Independent Consultant Agreement to be duly executed.

For: FloridaMakes

Date:

Maria Alfano  
Chief Operating Officer  
FloridaMakes, Inc.  
800 N. Magnolia Ave, Suite 1850  
Orlando, FL 32803

For: Consultant

Date: