

## INDEPENDENT CONTRACTOR AGREEMENT

This Consulting Agreement, dated effective \_\_\_\_\_, (this "Agreement"), is entered into between Etudes, Inc. ("the Company") and \_\_\_\_\_ ("the Contractor").

1. Independent Contractor. Subject to the terms and conditions of this Agreement, the Company hereby engages the Contractor as an independent contractor to perform the services set forth herein, and the Contractor hereby accepts such engagement.
2. Duties, Term, and Compensation. The Contractor's duties, term of engagement, compensation and provisions for payment thereof shall be as set forth in the estimate previously provided to the Company by the Contractor and which is attached as Schedule A, which may be amended in writing from time to time, or supplemented with subsequent estimates for services to be rendered by the Contractor and agreed to by the Company, and which collectively are hereby incorporated by reference.
3. Contractor is not, and shall not be considered an employee of the Company. The relationship of the Contractor to Etudes, Inc. established by this agreement is that of an Independent Contractor. Contractor acknowledges full responsibility for compliance with all Federal, State and City tax regulations regarding taxes that may accrue on the fee, including expenses, if any, paid to Contractor as a result of services rendered to the Company. Further, the Company will not provide any medical health insurance or similar plans or worker's compensation or any other benefit whatsoever to Contractor.
4. Written Reports. The Company *may* request that project plans, progress reports and a final results report be provided by Contractor on a monthly basis. A final results report may be requested at the conclusion of the project and shall be submitted to the Company in a confidential written report at such time. The results report shall be in such form and setting forth such information and data as is reasonably requested by the Company.
5. Inventions. Any and all inventions, discoveries, developments and innovations conceived by the Contractor during this engagement relative to the duties under this Agreement shall be the exclusive property of the Company; and the Contractor hereby assigns all right, title, and interest in the same to the Company. Any and all inventions, discoveries, developments and innovations conceived by the Contractor prior to the term of this Agreement and utilized by him in rendering duties to the Company are hereby licensed to the Company for use in its operations and for an infinite duration. This license is non-exclusive, and may be assigned without the Contractor's prior written approval by the Company to a wholly-owned subsidiary of the Company.
6. Confidentiality. The Contractor acknowledges that during the engagement he may have access to and become acquainted with various trade secrets, inventions, innovations, processes, information, computer programs, records and specifications owned or licensed by the Company and/or used by the Company in connection with the operation of its business including, without limitation, the Company's business and product processes, methods, customer lists, accounts and procedures. The Contractor agrees that he will not

disclose any of the aforesaid, directly or indirectly, or use any of them in any manner, either during the term of this Agreement or at any time thereafter, except as required in the course of this engagement with the Company. All files, records, documents, blueprints, specifications, information, letters, notes, media lists, creative works, notebooks, and similar items relating to the business of the Company, whether prepared by the Contractor or otherwise coming into his possession, shall remain the exclusive property of the Company. The Contractor shall not retain any copies of the foregoing without the Company's prior written permission. Upon the expiration or earlier termination of this Agreement, or whenever requested by the Company, the Contractor shall immediately deliver to the Company all such files, records, documents, specifications, information, and other items in his possession or under his control. The Contractor further agrees that he will not disclose his retention as an independent contractor or the terms of this Agreement to any person without the prior written consent of the Company and shall at all times preserve the confidential nature of his relationship to the Company and of the services hereunder.

7. Conflicts of Interest; Non-hire Provision. The Contractor represents that he is free to enter into this Agreement and that this engagement does not violate the terms of any agreement between the Contractor and any third party. Further, the Contractor, in rendering his duties shall not utilize any invention, discovery, development, improvement, innovation, or trade secret in which he does not have a proprietary interest. During the term of this agreement, the Contractor shall devote as much of his productive time, energy and abilities to the performance of his duties hereunder as is necessary to perform the required duties in a timely and productive manner. The Contractor is expressly free to perform services for other parties while performing services for the Company. For a period of six months following any termination, the Contractor shall not, directly or indirectly hire, solicit, or encourage to leave the Company's employment, any employee, Contractor, or contractor of the Company or hire, any such employee, Contractor, or contractor who has left the Company's employment or contractual engagement within one year of such employment or engagement.
8. Right to Injunction. The parties hereto acknowledge that the services to be rendered by the Contractor under this Agreement and the rights and privileges granted to the Company under the Agreement are of a special, unique, unusual, and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in any action at law, and the breach by the Contractor of any of the provisions of this Agreement will cause the Company irreparable injury and damage. The Contractor expressly agrees that the Company shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by the Contractor. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies that the Company may have for damages or otherwise. The various rights and remedies of the Company under this Agreement or otherwise shall be construed to be cumulative, and no one of them shall be exclusive of any other or of any right or remedy allowed by law.
9. Merger. This Agreement shall not be terminated by the merger or consolidation of the Company into or with any other entity.

10. Termination. The Company may terminate this Agreement at any time by 10 working days' written notice to the Contractor. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of the Company, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, the Company at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.
11. Independent Contractor. This Agreement shall not render the Contractor an employee, partner, agent of, or joint venturer with the Company for any purpose. The Contractor is and will remain an independent contractor in his relationship to the Company. The Company shall not be responsible for withholding taxes with respect to the Contractor's compensation hereunder. The Contractor 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.
12. Insurance. The Contractor will carry liability insurance (including malpractice insurance, if warranted) relative to any service that he performs for the Company.
13. Successors and Assigns. All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns.
14. Choice of Law. The laws of the state of California shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.
15. Arbitration. Any controversies arising out of the terms of this Agreement or its interpretation shall be settled in California in accordance with the rules of the American Arbitration Association, and the judgment upon award may be entered in any court having jurisdiction thereof.
16. 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.
17. Waiver. Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.
18. Assignment. The Contractor shall not assign any of his rights under this Agreement, or delegate the performance of any of his duties hereunder, without the prior written consent of the Company.
19. Notices. Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served

personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as follows:

If to the Contractor:        [Name]  
   [street address]  
   [city, state, zip]

If to the Company:        Etudes, Inc.  
   440 North Wolfe Road  
   Sunnyvale, CA 94085

Any party hereto may change its address for purposes of this paragraph by written Notice, given in the manner provided above.

- 20. Modification or Amendment. No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto. This agreement is held unless all required signatures are evident below.
- 21. Entire Understanding. This document and any exhibit attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.
- 22. Unenforceability of Provisions. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above.

Etudes, Inc.  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Consultant  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
SSN / EIN: \_\_\_\_\_  
Date: \_\_\_\_\_

## SCHEDULE A DUTIES, TERM, AND COMPENSATION

### 1. CONSULTATION SERVICES

The Contractor will perform \_\_\_\_\_ services for the Company in accordance with the terms and conditions set forth in this agreement. He will report directly to \_\_\_\_\_, in connection with the performance of the duties under this Agreement, and to any other party designated by Vivie Sinou, Executive Director, and shall fulfill any other duties reasonably requested by the Company and agreed to by the Contractor. The Contractor shall consult with other officers and employees of the Company, as necessary, to accomplish his tasks. In rendering consulting services under this Agreement, Contractor shall conform to highest professional standards of work and business ethics.

### 2. TIME DEVOTED BY CONTRACTOR

It is anticipated the Contractor will devote approximately \_\_\_\_\_ **hours per week** in fulfilling his obligations under this contract. Contractor shall have discretion in selecting the dates and times he performs such consulting services throughout the month, giving due regard to the needs of the Company's business. The particular amount of time may vary from day to day or week to week. However, the Contractor shall devote a minimum of \_\_\_\_\_ **hours per month** to his duties in accordance with this agreement. In the event that the Contractor dedicates fewer or more than \_\_\_\_\_ hours in any given month for the services to be rendered in accordance with the terms, the hours shall be rolled over or adjusted accordingly in the next month period.

### 3. PLACE WHERE SERVICES WILL BE RENDERED

The Contractor will perform most services in accordance with this contract at a location of Contractor's discretion. In addition, the Contractor will perform services via Instant Messenger, E-mail, on the phone and at such other places as necessary to collaborate with employees of the Company to accomplish the technical tasks and services deliverables of this agreement.

### 4. PAYMENT TO CONTRACTOR

The Contractor will be paid at the hourly rate of \_\_\_\_\_ **per hour** for work performed in accordance with this agreement. However, the total monthly payment to the Contractor for services rendered **shall not exceed** \_\_\_\_\_ **per month** without prior written approval by an authorized representative of the Company. The Contractor will submit a monthly statement to the Executive Director of the Company, by the 25<sup>th</sup> day of each month, setting forth the time spent on tasks with a brief summary of services rendered. The Company will pay the Contractor the amount due on the last day of each month, following the month the services were provided.

### 5. TERM OF CONSULTING SERVICES

This engagement shall commence upon execution of this Agreement and shall continue in full force and effect through \_\_\_\_\_. The Agreement may only be extended thereafter by mutual agreement, unless terminated earlier in accordance with this Agreement.