

Contractor Agreement

This Agreement ("**Agreement**") is made \_\_\_\_\_, 20\_\_\_\_, ("**Effective Date**"), by Kama`aina Homestay, LLC ("**Kama`aina Homestay**") and \_\_\_\_\_ ("**Contractor**"). The term "**Party**" means either Kama`aina Homestay or Contractor, as the context suggests; and the term "**Parties**" means Kama`aina Homestay and Contractor collectively.

1. **Terms of Agreement**

1.1 Contractor agrees to provide the services and/or provide the materials described in Schedule A.

1.2 Kama`aina Homestay may terminate this Agreement upon the occurrence of any of the following events:

- (i) Contractor becomes insolvent; consents to the appointment of a receiver or trustee for all or a substantial part of its properties; or files a petition, answer, or other instrument (whether under federal bankruptcy law or any other law) seeking or acquiescing in the arrangement of its debts or other debt-related relief;
- (ii) a petition is filed against Contractor that is not dismissed within thirty (30) days, seeking relief under any law and is for: (A) the appointment of a receiver, trustee, or assignee in bankruptcy or insolvency of Contractor or its property; or (B) an order directing the winding up or liquidation of a Contractor's affairs;
- (iii) any representation or warranty made by Contractor in this Agreement is untrue or misleading, in any material respect, and Contractor fails to correct the same so that it becomes true within thirty (30) days after written notice from Kama`aina Homestay;
- (iv) Contractor commits a material breach of this Agreement and such is not cured within thirty (30) days after written notice from Kama`aina Homestay; or
- (v) Contractor ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or not performed, that may materially adversely affect a Party's ability to perform its obligations under this Agreement.
- (vi) Kama`aina Homestay gives Contractor thirty (30) days' notice of intent to terminate the Agreement.

1.3 Neither Party shall be liable for any delay in performing or failure to perform obligations hereunder if such failure or delay is a result of causes beyond the reasonable control of the responsible party, including, but not limited to, acts of God or of the public enemy, acts of government in either its sovereign or contractual capacity, fires, floods, hurricanes, earthquakes, strikes, freight embargoes, unavailability of power, and/or severe weather conditions.

## **2. Waiver of Liability**

2.1 Contractor agrees to INDEMNIFY, DEFEND, and HOLD HARMLESS Kama`aina Homestay from and against any and all current and future claims, actions, suits, procedures, costs, expenses, damages and liabilities, including attorneys' fees brought against Kama`aina Homestay as a result of any issue related or associated with the Contractor's performance of this agreement, including, but not limited to, any act or omission by Contractor, creating liability or dispute with any third-party. Such claims include, but are not limited to: (1) loss of property, personal injury, illness, accident, death, loss of consortium, loss of companionship, loss of filial affection, misrepresentation, non-disclosure, fraud, or any claim in the nature of tort; and/or (2) any act or omission by any Contractor creating liability or dispute with any third-party in the nature of breach of contract, assumpsit, or quantum meruit.

## **3. Arbitration**

3.1 Any dispute arising under this Agreement, including any breach of or disagreement regarding the interpretation of this Agreement, which the Parties cannot resolve in good faith ("Dispute"), will be submitted to binding arbitration before a single arbitrator. Such arbitration will be the exclusive method for resolving a Dispute. No Party may commence an action or other proceeding to resolve or address a Dispute. A Party may initiate arbitration by giving to the other Party written notice of submission to arbitration of such a Dispute ("Arbitration Demand"). Upon receipt of an Arbitration Demand, if the Parties cannot agree upon and retain a single arbitrator within five (5) days following the date an Arbitration Demand is received, then the arbitrator will be selected pursuant to the Arbitration Rules of Dispute Prevention and through Dispute Prevention and Resolution, Inc.

3.2 Contractor is required to have liability coverage under a commercial general liability policy, errors and omissions policy, and/or umbrella insurance policy to cover any claims brought by Kama`aina Homestay. Upon request, Contractor will make any Insurance Policies, Declaration Pages, or Certificates of Insurance applicable available for inspection by Kama`aina Homestay.

## **4 Miscellaneous**

4.1 Titles and Captions. All section titles or captions in this Agreement are for convenience only. They are not a part of this Agreement and do not define, limit, extend, or describe the scope or intent of any provisions.

4.2 Definitions. The bolding, capitalizing of initial letters, and enclosing of a word or phrase in quotation marks in this Agreement means that such word or phrase is defined by the surrounding text, as suggested by the context (“Defined Terms”). Unless otherwise stated or logically required by the context, each other use of a Defined Term with capitalized initial letters but without bolding and quotation marks incorporates the corresponding definition. An uncapitalized word or phrase is not a Defined Term and retains its common or legal term-of-art meaning, as applicable, notwithstanding that such word or phrase may contain the same text as a Defined Term.

4.3 Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement includes the corresponding masculine, feminine, or neuter forms. The singular form of Defined Terms, nouns, pronouns, and verbs include the plural, and vice versa.

4.4 Further Action. The Parties will execute and deliver all documents, provide all information, and take or refrain from taking action, as may be necessary or appropriate, to achieve the purposes of this Agreement.

4.5 Assignment and Delegation. Neither Party may assign this Agreement without the prior written consent of the other Party.

4.6 Binding Effect. This Agreement binds and inures to the benefit of the Parties and their successors, legal representatives, and permitted assignees.

4.7 Integration. This Agreement constitutes the final, entire agreement among the Parties pertaining to the subject matter of this Agreement, and supersedes all prior agreements and understandings pertaining to this Agreement. All Schedules referenced in this Agreement are a part of this Agreement.

4.8 Waiver. A failure by a Party to require strict performance of any provision of this Agreement, or to exercise any right or remedy arising because of a breach, is not a waiver of such breach or any other covenant, duty, agreement, or condition. Any extension or waiver by a Party of any provision in this Agreement will be valid only if set forth in a writing signed by such Party.

4.9 Amendment. This Agreement may not be amended or modified except by a written instrument executed by all of the Parties.

4.10 Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable in any respect for any reason, the validity, legality, and enforceability of such provision in every other respect and the remaining provisions of this Agreement will not, at the election of the Party for whose benefit the provision exists, be in any way impaired.

4.11 Third-Party Beneficiaries. No person(s), other than the parties themselves, has any rights or remedies under this Agreement.

5. **Signing**

5.1 This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile. Digital or electronically stored copies are valid as an original.

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IN WITNESS WHEREOF, this Agreement has been executed by the parties effective as of the date of: \_\_\_\_\_

**Kama`aina Homestay**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_.

**Contractor(s):**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_